

# Guidelines



## **Guidelines 02/2022 on the application of Article 60 GDPR**

**Version 1.0**

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## EXECUTIVE SUMMARY

With the introduction of the GDPR, the concept of the one-stop shop was established as one of the main innovations. In cross-border processing cases, the supervisory authority in the Member State of the controller's or processor's main establishment is the authority leading the enforcement of the GDPR for the respective cross-border processing activities, in cooperation with all the authorities which may face the effects of the processing activities at stake: be it through the establishments of the controller or processor on their territory or through complaints from their residents against these processing activities. Indeed, data subjects should be able to easily pursue their data protection rights and should be able to complain to a supervisory authority at their place of habitual residence. This supervisory authority also remains the contact point for the complainant in the further course of the complaint-handling process. In order to meet all these requirements, Article 60 GDPR regulates the cooperation procedure between the lead supervisory authority and the other supervisory authorities concerned.

These guidelines handle the interactions of the supervisory authorities with each other, with the EDPB and with third parties under Article 60 GDPR. The aim is to analyse the cooperation procedure and to give guidance on the concrete application of the provisions.

### **General considerations**

A common understanding of the terms and basic concepts is a prerequisite for the cooperation procedure to run as smoothly as possible.

Firstly, the guideline states that:

- the cooperation procedure applies in principle to all cross-border processing cases,
- the lead supervisory authority is primarily responsible for handling such cases, without being empowered to ultimately decide on its own, and that
- the cooperation procedure does not impact the independence of the supervisory authorities, which retain their own discretionary powers within the framework of cooperation.

It is recalled that the effects of national procedural regulations must not lead to limiting or hampering the cooperation under the GDPR.

### **Structure and Content of the guidelines**

These guidelines are based on the requirements of Article 60 and clarify paragraph by paragraph the conditions arising from the regulation itself and its practical implementation.

In the context of Article 60(1) GDPR, it is established that the principles to be observed throughout the whole cooperation procedure are mutual obligations. It is stressed that while the achievement of consensus among the SAs is not an obligation, the endeavour to reach an agreed consensual decision is an overarching objective to be achieved through a mutual and consistent exchange of all relevant information. This exchange of information is obligatory for all CSAs, including the LSA. The meaning of "relevant" in this context is further clarified through examples. In terms of timeliness, the paper recommends sharing the relevant information proactively and as quickly as possible. Lastly, the possibility to use informal means of communication to reach consensus is recalled.

The following section on Article 60(2) GDPR addresses the situation of the LSA requesting CSA(s) to provide mutual assistance pursuant to Article 61 GDPR and conducting joint operations pursuant to Article 62 GDPR and provides guidance on the specifications of these instruments in the context of an ongoing cooperation procedure.

The paper addresses the process of the submission of the draft decision under Article 60(3) GDPR. It highlights that the LSA has to act proactively and as quickly as possible and that the CSAs should be able to contribute to the overall procedure, also before the creation of the draft decision (e.g. exchange of information). In addition, the LSA is required to submit a draft decision to the CSAs in all cases of cross border processing.

The sections on Article 60(4)-(6) GDPR outline the different scenarios that follow the submission of a draft decision by the lead supervisory authority and thus provide a consistent approach to the procedure between the submission of a (revised) draft decision and either the triggering of the binding effect in the absence of relevant and reasoned objections or the submission to the dispute resolution procedure. The guidelines also recognise the possibility for the LSA to adapt and resubmit the draft decision submitted under Article 60(4) GDPR prior to the expiry of the four-week period, provided that new factors or considerations justify such adaptation and that their importance is fairly balanced against the expediency of the cooperation procedure. In addition, it is specified that there may be multiple revised decisions but only in cases where it is likely to reach a consensus due to substantive convergence between the LSA and other CSA(s).

This is followed by the analysis of the different scenarios after the (revised) draft decision has become binding on the lead supervisory authority and the supervisory authorities concerned. It is clarified which supervisory authority has to adopt the final national decision pursuant to Article 60(7)-(9) GDPR on the basis of the draft decision that has become binding and which supervisory authority has to notify the controller/processor or the complainant. In this context, the distinction between notifying and informing is also addressed.

Furthermore, the guidelines address the important distinction between situations that constitute a dismissal/rejection of a complaint, with the consequence that the complaint-receiving SA adopts the final decision, and situations in which the lead supervisory authority acts on the complaint in relation to the controller, with the consequence that the lead supervisory authority adopts the final decision. In this context, it is highlighted that terms of EU law not making express reference to member state law must normally be given an autonomous and uniform interpretation.

The following section outlines the duties of the controller or processor to ensure that processing activities in all its establishments are in compliance with the final decision (Article 60(10) GDPR).

The last section addresses the specific requirements of the application of Article 66 GDPR (Urgency Procedure) in the course of an ongoing cooperation procedure (Article 60 (11) GDPR).

A quick reference guide annexed to the guidelines is intended to give practitioners in the supervisory authorities a quick overview of the procedure and to illustrate the complex procedure.

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# The European Data Protection Board

Having regard to Article 70(1)(e) of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, (hereinafter “GDPR”),

Having regard to the EEA Agreement and in particular to Annex XI and Protocol 37 thereof, as amended by the Decision of the EEA joint Committee No 154/2018 of 6 July 2018<sup>1</sup>,

Having regard to Article 12 and Article 22 of its Rules of Procedure;

## HAS ADOPTED THE FOLLOWING GUIDELINES

### 1 INTRODUCTION

1. The number of national enforcement proceedings concerning cross-border data processing activities is constantly increasing, with many being resolved within the GDPR cooperation mechanism. While Article 57(1)(g), (f) set the frame for the general cooperation, the One Stop Shop (OSS) is established under Article 56 and 60 GDPR<sup>2</sup>. This specific procedure requires the Lead Supervisory Authority (LSA) to cooperate with the other Concerned Supervisory Authorities (other CSAs) in an endeavour to reach consensus.
2. It should be underlined that the OSS model, allowing the supervisory authorities (SAs) of all Member States (MS) to be involved in a type of co-decision procedure, is a novel concept to data protection legislation introduced by the GDPR.
3. These guidelines handle the interactions of the SAs with each other, with the EDPB and with third parties under Article 60. The aim is to analyse and give guidance on the concrete application of the provisions. As the cooperation procedure relates to processing activities, its outcome concerns, by definition, the actors involved in such processing (data subject, controller, processor(s), etc.). However, since the duty to cooperate contained in Article 60 applies to SAs, this paper focuses on the obligations of the LSA and other CSA(s).
4. It is, not in the scope of these guidelines to address the issue of designation of the LSA and other CSAs. These guidelines presume that this has been clarified and agreed according to Article 56 as the Article 60 procedure attributes specific competences and actions to the involved SAs based on their roles. Therefore, it is assumed that sufficient information to establish the different roles has been already shared at the point that the work under Article 60 GDPR starts.

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<sup>1</sup> References to “Member States” made throughout these Guidelines should be understood as references to “EEA Member States”.

<sup>2</sup> The term “Article” without further specification refers to those of the GDPR.

5. However, in specific situations there might occur later on a shift in the competences and roles of the SAs (e.g. a new location of the main establishment or a case of joint controllership). Therefore, as soon as the SAs get knowledge of any circumstance that might affect the competence for handling the case during the cooperation phase, information should be shared immediately among SAs, in order to identify the new presumed LSA and to reach an agreement on the allocation of roles<sup>3</sup>.
6. Upon agreement, the Article 60 procedure would proceed accordingly. If consensus cannot be achieved, the matter is to be referred to the EDPB making use of Article 65(1)(b).
7. Whenever in these Guidelines reference is made to the use of the "*EDPB Information System*", such reference means the Internal Market Information System ("IMI") in pursuant to Regulation (No) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation using the Internal Market Information System and repealing Commission Decision 2008/49/EC ("IMI Regulation")<sup>4</sup>. The EDPB Information System shall be used in accordance with Article 60(12) for the supply of all information required under Article 60. In addition, SAs should use all forms of communication, such as e-mails, phone, videoconference or in person, to facilitate the process of achieving consensus.

## 2 ARTICLE 60 IN THE FRAMEWORK OF THE OSS-SYSTEM

### 2.1 Applicability of the cooperation procedure

8. The cooperation procedure between the LSA and the other CSAs under Article 56(1) and Article 60 essentially has the following conditions: the processing operation has to be cross-border according to Article 4(23), which also means that the controller or processor must have a main or single establishment in the EU. Article 4(23) provides for two alternative connected definitions. Firstly, Article 4(23)(a) requires that the controller or processor has establishments in more than one MS. Secondly, the specific data processing operation in question has to be carried out in the context of the activities of several EU establishments. According to Article 4(23)(b) the effects on data subjects can define cross-border processing. In case the processing takes place in the context of the activities of a single establishment of a controller or processor within the EU, cross-border processing is assumed if the processing substantially affects or is likely to substantially affect data subjects in more than one MS.<sup>5</sup>
9. The EDPB stresses that Articles 56 and 60<sup>6</sup> apply to the cooperation between SAs in all cases based on cross-border processing, without regard to the origin of the case (complaint, ex officio inquiry, etc.). This is without prejudice to the provisions of Article 55<sup>7</sup> and Article 65.
10. While only Article 60(7) last sentence as well as paragraphs 8 and 9 refer to the handling of complaints, Article 56(1) and Article 60 as the core provisions concerning the cooperation procedure refer to cross-border processing in general. With regard to the cooperation mechanism, Article 60(3) also refers to the fact that the LSA shall "*communicate the relevant information on the matter*", i.e. the case in

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<sup>3</sup> See also: Opinion 8/2019 on the competence of a supervisory authority in case of a change in circumstances relating to the main or single establishment

<sup>4</sup> See Also Article 17 of the Rules of Procedure of the EDPB.

<sup>5</sup> See also: WP244 Guidelines for identifying a controller or processor's lead supervisory authority.

<sup>6</sup> Except in the case described in para. 13 below.

<sup>7</sup> See also: Recital 128.

general, so that it is not at all limited to complaint-based cases. The term “*matter*” includes for instance “*ex officio*” proceedings and the possibility under Article 57(1)(h) to conduct an investigation e.g. on the basis of information from another SA or other public authority. As complaint handling is already covered by Article 57(1)(f), this information provided according to Article 57(1)(h) does not have to be based on a complaint.

11. Furthermore, this is supported by a systematic approach with regard to possible sanctions or remedies under Article 58(2), which applies to all types of processing and not just to complaints.

**Example 1:** Sources originating from the media or from whistle-blowers provided by a CSA may also initiate an Article 60 procedure if they are specific and substantial, i.e. facts are presented in a concrete and complete manner. However, simply forwarding a newspaper article without more detailed information, e.g. an initial evaluation by the CSA, does not regularly constitute sufficient evidence of a data protection breach and would therefore not be considered to be sufficiently substantiated to cause supervisory measures. On the contrary, firm evidence does not need to be provided to open an Article 60 procedure, because the procedure itself aims to establish whether an infringement exists or not. However, the LSA has wide discretionary powers to decide when to initiate an investigation *ex officio* based on information received on potential infringements from other CSAs or sources.

12. The application in all cross-border cases also follows from the purpose of the cooperation mechanism: It was created “*to foster a uniform application of the data protection rules through a consistent interpretation*”<sup>8</sup> and to ensure effective supervision and enforcement within the Union. A limitation to complaint-based cases would contradict this purpose.
13. For cases with only local impacts, Article 56(2) and 56(3) provide that the SA, which received the complaint or was made aware of a possible infringement, shall be competent if the LSA decides not to handle the case. Article 60 does not apply in these cases. Only where the LSA decides to handle the case Article 60 is applicable according to Article 56(4).

## 2.2 LSA/CSA as involved actors

14. Article 56(1) contains a legal definition of the competent LSA; that definition is to be read in conjunction with Article 60, which sets out the essential tasks and powers of the LSA in the Article 60 procedure<sup>9</sup>. The LSA is defined as the SA of the main establishment or of the single establishment of the controller or processor in the Union, which is competent for the cross-border processing carried out by that controller, or processor. It is also the sole interlocutor for that controller or processor according to Article 56(6).
15. The relevant starting point for determining the LSA is the specific cross-border processing of data (“carried out”) by the respective controller or the processor<sup>10</sup>.
16. WP244 clarifies that “*a lead supervisory authority is the authority with the primary responsibility for dealing with a cross-border data processing activity*”. In other words, the LSA has the competence for the cross-border processing carried out by the given controller or processor, being the sole interlocutor

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<sup>8</sup> COM (2020)264 final, p.6.

<sup>9</sup> For “*local cases*” under Article 56(2), the provisions of Article 56(3) and (4) must be observed.

<sup>10</sup> For further information on this matter see also: WP244 rev.01: “Guidelines for identifying a controller or processor’s lead supervisory authority”



for that controller or processor in the respective MS under Article 56(6). Within the framework of the cooperation procedure set out in Article 60, and pursuant to Article 56(1), this competence translates into a 'leading function', i.e. into a steering role in taking the case forward, organising the cooperation procedure with a view to involving the other CSAs, coordinating investigations, gathering evidence etc. as well as in the responsibility for submitting a draft decision which is subject to opinions or objections by the other CSAs<sup>11</sup>.

17. However, the EDPB considers the LSA not to have exclusive competences with regard to the cooperation process, i.e. the GDPR provides for a shared responsibility to monitor and enforce the application of the GDPR in a consistent manner, so that the LSA's position is subject to the views of the other CSAs and the outcome should be a consensually reached decision. This is made clear by the decision of the Union legislator that in cases of persistent disagreements between SAs, these must be resolved by the EDPB pursuant to Article 65(1)(a).
18. According to Article 4(22) a CSA means a SA which is concerned by the processing of personal data because:
  - (a) the controller or processor is established on the territory of the MS of that SA<sup>12</sup>;
  - (b) data subjects residing in the MS of that SA are substantially affected or likely to be substantially affected by the processing; or
  - (c) a complaint has been lodged with that SA.
19. The EDPB considers these requirements to be basically obvious and simple to state so that, in principle, no special requirements need to be observed here. In terms of factor (a), the existence of an establishment will generally be easy to determine. The same applies to (c) and the question whether a particular SA has received a complaint. It is to be noted that in (b) the data subject must merely reside in the MS in question; he or she does not have to be a citizen of that state<sup>13</sup>.
20. In the event of doubt, it seems appropriate with regard to the legal consequences that basically each authority needs to substantiate its reasoning for being concerned.
21. The term "*substantially affected*" has been further defined in WP244 by naming factors (such as use of a particular language, use of a particular currency, availability of a service in the MS concerned, concrete address through controller or processor etc.) which shall be taken into consideration by each authority when assessing whether they are concerned.
22. When at any point a previously non-concerned SA becomes concerned during an ongoing Article 60 procedure (for instance by receiving a complaint), the following basic procedure can be envisaged:
  - The CSA should immediately notify the LSA of its status and request its inclusion into the OSS procedure.

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<sup>11</sup> In this respect the role of the LSA has been characterised as at several points "*primus inter pares*", e.g. by the Advocate General in his Opinion on Case 645/19, para. 111.

<sup>12</sup> For further information in the context of the term "*establishment*" see EDPB Guidelines 3/2018, p.5-7 as well as regarding the term of "in the context of the activities of an establishment" 3/2018 p.7-9.

<sup>13</sup> See also: WP244 Guidelines for identifying a controller or processor's lead supervisory authority, p.9.

- The LSA should make sure to involve this new CSA as such, especially in the respective case register, and should inform the new CSA of its inclusion into the decision-making procedure. If the LSA becomes aware that a not yet involved authority is or has become a CSA, it should inform it about this change of status<sup>14</sup>.
23. The involvement of a newly concerned SA in an ongoing cooperation procedure should be possible at any stage of the case but cannot have any effect on the procedure enshrined in Article 60. As a result, all deadlines and procedures prescribed by Article 60 remain unaffected, i.e. for instance the deadline of Article 60(4), once the LSA has submitted its draft decision, applies irrespective of the fact that in the meantime a new CSA could join the procedure.
  24. For this reason, the CSA may consider whether its respective case can still be handled effectively within the ongoing cooperation procedure and whether it should rather open a new procedure, for instance because the current one does not cover (some) core issues in the case before the CSA.

### 2.3 Independence of SAs within the cooperation procedure

25. Within the cooperation procedure, both the LSA and the other CSAs act as independent SAs according to Article 52(1).
26. However, the CJEU stressed<sup>15</sup> that the independence of the SAs was introduced in order to give greater protection to the data subjects concerned and not to confer a special status on the supervisory bodies themselves<sup>16</sup>. Independence is therefore to be understood as absolute protection against any external influence. However, in this context, the SAs form a unit within the framework of a European administrative network, within which they are responsible for ensuring the consistent application of the GDPR throughout the Union.
27. The reference to the cooperation procedure in the provision establishing the SAs (Article 51(2)) underlines the importance of the cooperation mechanism for the functioning of a unified supervision and an effective protective standard through a consistent application of the GDPR within the Union.
28. In this respect, the EDPB underlines that all steps within the cooperation procedure are compatible with the legally prescribed independence granted to SAs pursuant to primary law and Article 52, as such independence is from external influence as clarified above and has no bearing on the general obligation to cooperate that is set out as an overarching duty within Article 60.
29. It should be noted that SAs, as national administrative authorities, enjoy a certain margin of discretion pursuant to domestic law in deciding with all due diligence the course of action that can best achieve the public interest they serve (see Article 51(1)). This discretionary power must be exercised in line with the provisions of the GDPR and in accordance with appropriate procedural safeguards set out in Union and Member State Law, impartially, fairly and within a reasonable time.
30. Thus, the discretion to be acknowledged to SAs acting as independent administrative authorities, free from the influence of external stakeholders, cannot be unlimited in particular vis-à-vis EU law, as they

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<sup>14</sup> The whole process should be conducted by using the EDPB information system.

<sup>15</sup> CJEU Case C-518/07, *Commission v Germany*, para. 25 and 32 et seq. [ECLI:EU:C:2010:125], Case C-362/14, *Schrems v DPC*, paras. 99 [ECLI:EU:C:2015:650]; confirmed in Case – C-311/18, *Schrems II* para. 115 [ECLI:EU:C:2020:559].

<sup>16</sup> Case C-518/07, para. 25 [ECLI:EU:C:2010:125], see also Case C-362/14, para. 41.

(both the LSA and the other CSAs) are required to act cooperatively and are accountable for their decisions (or non-decisions) regarding a given case.

## 2.4 Impact of national procedural rules

31. Since the GDPR does not regulate all details of cooperation, the tasks and powers entrusted to SAs by Article 57 and Article 58 have to be fulfilled by relying on national procedural law.
32. It is usual that EU legal instruments may include procedural provisions (such as the GDPR Articles conferring certain powers on SAs), but insofar as EU law does not provide for specific procedural rules, national procedural law applies. In these cases the principle of national procedural autonomy, which is a general principle of EU law, generally applies. This general principle is limited, as is outlined extensively in the case law of the CJEU, by the EU principles of equivalence and effectiveness<sup>17</sup>. These principles stipulate that the applicable national rules must not treat an EU determined matter more unfavorably than purely national ones (equivalence). In addition, the application of national provisions must not significantly complicate or make it practically impossible to realise the purpose of the European legal standards (effectiveness).
33. However, since such different national administrative rules exist, their application may lead to differences and may (partly) be the reason why SAs handle cases in different ways and investigate them differently. Nevertheless, these distinctions in national (procedural) law must not lead to situations in which the principles of equivalence and effectiveness are undermined.
34. Accordingly, if it is not possible to reconcile EU law and national requirements in this way, i.e. if the national provision contradicts EU law, the national regulations that contradict EU law must in principle remain unapplied<sup>18</sup>.
35. Regarding the cooperation mechanism the EDPB stresses therefore that national (procedural) law having impact to the effect of '*significantly complicating or making it practically impossible to realise*' effective cooperation is not compatible with the GDPR and '*must be reconciled with the requirement of uniform application of Community law so as to avoid unequal treatment*' (ECJ, C-290/91, para. 8). This being an obligation imposed on all Member States, if the above reconciliation proves impossible, the consequence is that an authority should consider not applying such national law.

## 3 ARTICLE 60(1) – MUTUAL OBLIGATION

### 3.1 General

36. Article 60(1) provides for a general duty of cooperation, which obliges all involved SAs equally. The wording clarifies by the use of "*shall*" that the obligation to cooperate is not a matter of discretion but a legal obligation.
37. Article 60(1) lays down basic and overarching principles, which apply throughout the entire cooperation between SAs. In accordance with the wording of this Article, the key concepts of the

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<sup>17</sup> Regarding the OSS see: Case 645/19 para. 53: '*The application of the 'one-stop shop' mechanism consequently requires, as confirmed in recital 13 of Regulation 2016/679, sincere and effective cooperation between the lead supervisory authority and the other supervisory authorities concerned.*'

<sup>18</sup> See also: CJEU: Case C-205-215/83, para. 19; C-94/87, para. 12; C-280/13, para. 37.

cooperation procedure consist of “*an endeavour to reach consensus*” and the obligation to “*exchange all relevant information*”.

38. The EDPB expressly points out that these obligations are to be complied with by the LSA and every other CSA (mutual obligation).

### 3.2 The endeavour to reach consensus

39. The “*endeavour to reach consensus*” is to be understood as a legal objective<sup>19</sup>, which does not lead to a legal obligation to reach consensus in a respective case. However, this legal objective has a decisive influence on all actions of all CSAs throughout the entire cooperation process, i.e. it sets the direction for cooperative acting in such a way that SAs do their utmost and make a “*serious determined effort*”<sup>20</sup> in order to achieve consensus.
40. The cooperation procedure conducted in an “*endeavour to reach consensus*” necessarily entails a mutual exchange of views and documents on the subject matter. This mutual exchange is intended to ensure that all circumstances relevant to the case have been taken into account and could thus also contribute to prevent disputes<sup>21</sup>.
41. That consensual acting should be the rule is further illustrated by the provisions contained in Article 60(11) and Article 66(1) whereby “*in exceptional circumstances*” and “*by derogation to (...) the procedure referred to in Article 60*”, respectively, a CSA may take urgent measures<sup>22</sup>.
42. The importance of this objective is confirmed by the comparison between the current text and the original 2012 Commission proposal for the GDPR, which did not mention “*consensus*” and envisaged simply the exclusive competence of the LSA in cross-border cases. The current text mirrors a different approach endorsed by the EU legislator, where emphasis is placed on the mandatory cooperation of the SAs, which is supposed to be fair and constructive<sup>23</sup>. In their efforts to reach consensus, SAs should use all possible tools, including mutual exchanges of relevant information, providing each other with an opportunity to express their views on exchanged information and take into account the point of view of other CSAs<sup>24</sup>.
43. As a result, this translates into a mutual obligation placed on the LSA and other CSAs to select cooperation approaches that are best suited to achieve consensus as described.

### 3.3 The obligation to exchange all relevant information

A key as well as further priority element of the cooperation procedure lies in the mandatory (“*shall*”) exchange of “*all relevant information*” between the involved SAs – this applies throughout the whole cooperation procedure.

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<sup>19</sup> See also: Case C-645/19 para. 51 ‘...the lead supervisory authority is, in particular, required to endeavour to reach consensus.’

<sup>20</sup> Merriam-Webster: “endeavour”.

<sup>21</sup> See also: Guidelines 9/2020 on relevant and reasoned objection under Regulation 2016/679, para. 9.

<sup>22</sup> See also: Recital 138 stating that “*in other cases of cross-border relevance, the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned should be applied (...) without triggering the consistency mechanism*”.

<sup>23</sup> See also: Opinion of AG on Case C-645/19, para. 87.

<sup>24</sup> 2012/0011 (COD) Article 51(2).

44. The exchange of relevant information is a mutual obligation that is necessary to enable the LSA and the other CSAs to effectively fulfil their roles e.g. when determining whether there has been an infringement of the GDPR<sup>25</sup>.
45. The mutual exchange of information is particularly important if no joint operations (Articles 60(2), 62) are envisaged by the LSA and no mutual assistance requests (Articles 60(2), 61) are relied upon to jointly gather relevant information. Without these additional procedures, which naturally require further engagement and coordination, the LSA and other CSAs have to rely on the mutual exchange of information as per Article 60(1)(2).

### 3.3.1 The term “Relevant information”

46. Which information is to be considered as “*relevant*” depends on the circumstances of each individual case. In principle, all information that is directly or indirectly conducive to the conclusion of the proceeding should be classified as relevant. This includes sufficient information about the factual elements and legal issues specific to the case. Information that is already known or publicly available does not necessarily need to be shared.
47. The exchange of information is therefore not an end in itself, but serves all SAs involved to deal with the case and to be able to fulfil their role as SAs properly. For practical implementation, it is therefore imperative that all parties involved act appropriately, i.e. proportionately and in the spirit of good cooperation. Therefore, the question in each case should be basically what information every SA would necessarily need itself in order to deal with the case.
48. For instance, in the case of a LSA, this refers to all relevant information gathered in dealing with the controller or processor – the LSA being “*the sole interlocutor*” of the controller (findings of investigations, reports, exchanges with the controller, records of meetings, further evidence etc.).
49. If the information is especially substantial in amount and scope the LSA should find ways to provide summaries, extracts, reports to substantiate the arguments made in the draft decision.
50. In the case of another CSA, this should translate into an obligation to proactively disclose, to the LSA as well as the other CSAs, all the relevant information regarding the case (complaint, data breach notification etc.) of which that SA is in possession and that is helpful in assessing the legal and factual situation of the case. This may include any pleadings, arguments, correspondence with data subjects or any findings made by the CSA in the course of e.g. the vetting phase, or national inspections that have led to the detection of a possible infringement at the national establishment of the controller in a cross-border context.

For instance, the following information could be exchanged between the SAs:

- Information that has consequences for the reallocation of the competences of the LSA and the distribution of roles/qualification of CSAs<sup>26</sup> (e.g. change in controllership or main establishment, etc.)
- Correspondence with data controller/data subjects on the subject of a complaint or investigation

<sup>25</sup> See also: EDPB, Decision 01/2020 on the dispute arisen under Article 65(1)(a) GDPR, at para. 134-136.

<sup>26</sup> See para. 5 above.

- Meetings with controllers or processors: Agenda, scope and task, minutes of the meeting/assessment of the outcome of the meeting, intended follow up actions
- Minutes of hearings and rehearings – also related to single issues of the case
- Questionnaires sent to the controller/processor
- Possible first draft report of the investigation/inspection
- Possible Expert reports (legal, technical) also from external providers
- Intended scope of an investigation/Inspection report/minutes of investigations
- Witness statements and other legal evidence, other relevant indications, experience in relation to the controller or processor or the data processing, administrative practice
- Information required to set the right focus: for instance, for an investigation into a very technical subject matter, it is likely that information relating to the technical aspects is very relevant, where in other cases the technical aspects are less relevant
- Note: The examples given above are non-exhaustive. Which information will be deemed by SAs to be relevant information will depend on the circumstances of the specific case.

For exchange of such information, the EDPB Information system should be used.

51. With regard to the data minimisation principle of Article 5(1)(c), it should be assessed case by case whether the communication of personal data is necessary. Personal data should be shared only if required to deal with a specific issue.
52. The LSA and other CSAs may flag specific pieces of information as (highly) confidential, particularly when this seems necessary in order to meet requirements of confidentiality constraints laid down in national laws. In such a case, the SAs should inform each other immediately and jointly find legal options for a solution against the background that confidentiality provisions usually relate to external third parties and not to CSAs. In this regard, any information received that is subject to national secrecy rules should not be published or released to third parties without prior consultation with the originating authority, whenever possible.
53. As regards requests for public access, without prejudice to national transparency regulations, SAs should consult each other before granting or refusing access to documents, which were exchanged during the cooperation procedure.

### 3.3.2 Timing of the information exchange

54. No specific timeline is provided in paragraph 1, as this is a general obligation irrespective of the timing involved. However, effective enforcement of the GDPR throughout the EU requires that all CSAs receive all relevant information in a timely manner, i.e. as soon as reasonably possible. Therefore, the EDPB considers the mutual obligation to exchange all relevant information necessarily to apply already prior to the submission of a draft decision by the LSA.
55. In order to facilitate the reaching of consensus, the information should be shared at a moment where it is still possible for the LSA to take on board the viewpoints of the other CSAs. This should apply to any stage of the proceedings, and in particular, it should prevent the other CSAs from being presented

with accomplished facts, for example because certain stages of the proceedings may be precluded under national law.

56. In this respect, Article 60 provides also ‘space for thought’ to both LSA and other CSAs in that there is room for facilitating the achievement of consensus through ‘informal’ exchanges of “*all relevant information*” without strict deadlines prior to triggering the ‘formal’ steps. The more comprehensive and timely the exchange of information between the SAs involved, the greater the likelihood of reaching a consensus as early as possible will be.
57. The EDPB recommends therefore as a minimum standard that the LSA makes all efforts to proactively share, with the other CSAs, the scope and main conclusions of its draft decision prior to the formal submission of the latter. This enables the other CSAs to form their own views in that respect and timely flag possible questions to the LSA. The LSA may decide to address these issues prior to issuing the draft decision formally and thus before triggering the very strict procedure envisaged in Article 60(4) and 60(5) for raising objections to the draft decision.
58. After all, it should be kept in mind that the cooperation mechanism is intended to be supportive and serve the effective enforcement of data protection within the EU. SAs will need to develop best practices through the continuous gathering of practical experience by being flexible in choosing optimal ways for cooperation.

## 4 ARTICLE 60(2) – MUTUAL ASSISTANCE AND JOINT OPERATIONS

### 4.1 General

59. Article 60(2) addresses specific forms of cooperation between the LSA and the other CSAs throughout the cooperation procedure provided for by Article 60, i.e. within the framework of the OSS mechanism.
60. Article 60(2) goes beyond the duty to exchange all relevant information, provided for by Article 60(1), and provides for a specific kind of cooperation that the LSA may pursue if necessary in a concrete case: either requesting CSA(s) to provide mutual assistance or requesting CSA(s) to engage into a joint operation conducted by the LSA.
61. The application of Articles 61 and 62 in the remit of Article 60(2) entails reading the provisions of those articles in conjunction with Article 60, and, therefore, they have to be adjusted to the precise context of a cooperation procedure and to the allocation of roles provided by the OSS mechanism, and in particular provided by Article 60(2).
62. By specifying the main purposes of such cooperation, i.e. for carrying out investigations or for monitoring the implementation of a measure concerning a controller or a processor in another MS, Article 60(2) emphasises two stages of the cooperation procedure where those cooperation tools are applicable: firstly, during the investigatory phase, before the final decision is adopted ; secondly, during the implementation phase, after the final decision was adopted and notified to the controller or processor.

### 4.2 Requirements of Article 60(2)

#### 4.2.1 The LSA may request

63. By referring to the LSA, this provision frames the action to be taken within the OSS mechanism while placing it within a specific case being handled, after the LSA has been identified. It should then be stressed that the possible resort to mutual assistance or to joint investigations pursuant to Article 60(2) is limited to the cooperation procedure related to the specific ongoing cross-border case.
64. Following the LSA's level of discretion to conduct the investigation or to follow-up the measures taken by the controller or processor to comply with its decision, the wording "*may request*" empowers the LSA to take the initiative, but only if it deems necessary or appropriate for the case at hand. It is up to the LSA to decide whether to make a request for mutual assistance or to have a joint operation, pursuant to Articles 61 and 62 respectively, as the GDPR does not impose on the LSA an obligation to use such possibilities.
65. Article 60(2) only covers requests made by the LSA, and not requests from the CSA<sup>27</sup> addressed to the LSA in the context of the Article 60 cooperation procedure, as those are already envisaged by Article 60(1) under the "*exchange of relevant information*".

#### 4.2.2 The term "At any time"

66. This means that the LSA may send requests for mutual assistance or for a joint operation, whenever the LSA considers the action justified to fully exercise its competence throughout the cooperation procedure provided for Article 60.
67. Indeed, within the same cooperation procedure, related to a specific case, the LSA may send several different requests, related to mutual assistance or to a joint operation or both. The LSA should bear in mind though that such requests should be necessary and adequate for the investigation and decision-making process or for monitoring the implementation by the controller or processor of the LSA's decision.

#### 4.2.3 The other CSAs as addressees

68. According to Article 60(2), the addressees of the requests by the LSA are in general the other CSAs, which have actively expressed to be concerned in the specific cooperation procedure<sup>28</sup>. In case of Article 61 mutual assistance requests, this does not imply that all CSAs are automatically addressees of the requests or have to be involved in the action at stake. That would depend on the assessment of the LSA on who is in the best position to contribute to the ongoing case. Conversely, when the LSA intends to carry out joint operations, all of the relevant CSAs have the right to participate pursuant to Article 62(2)<sup>29</sup>.
69. In the last phase of the cooperation procedure, provided for in Article 60(10), which relates to the follow-up of the compliance of the LSA's final decision by the controller or processor, again the LSA may decide, based on the specifics of the case at hand, which CSA(s) are to be involved in actions

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<sup>27</sup> Pursuant to Article 56(5), whenever the LSA decides not to handle the case in view of its local nature, the CSA assumes then the leading role of the investigation and shall handle it according to Articles 61 and 62. If it happens that the CSA handling the case may need to request assistance to the LSA, Article 60 procedure does not apply, so Articles 61 and 62 will be directly applicable outside the scope of Article 60(2).

<sup>28</sup> See para. 36189 et seq. on the binding effect of the draft decision.

<sup>29</sup> However, the LSA is at liberty to extend the participation to SAs that are not CSAs.



intended to verify *on the spot* the implementation of the decision and it will send the assistance requests accordingly (e.g. the CSAs of the MS where the controller or processor have establishments).

#### 4.3 Requests for mutual assistance

70. The mutual assistance instrument comprises a variety of possibilities for SAs to cooperate with each other, in order to implement and apply the GDPR in a consistent manner, taking into account the geographical dispersion of data controllers' or processors' establishments and of data subjects. However, the specific type of assistance requested will depend on the specific circumstances of the case, also taking into account that the LSA is the sole interlocutor of the controller or processor for the specific cross-border processing case being handled.
71. In a cross-border case within the Article 60 procedure, the LSA can send to the CSA(s) a request for any type of mutual assistance that is considered to be helpful for reaching a decision in the specific case.
72. During the investigatory phase, there are several situations where the LSA may need to request mutual assistance from other CSA(s). The most common one may be the case to ask for assistance of the CSA where the complaint was lodged (e.g. to seek for additional information to be provided by the complainant; to have certain facts checked or evidence collected in the organisation establishment of that MS). In such situations, only one CSA would be involved.
73. However, the LSA may need to request the CSA(s) to provide information or to carry out an investigation in specific establishment(s) of the controller or processor in some MS, in view of the conditions under which the data is being processed or the partition of responsibilities among establishments. In these circumstances, the LSA will address the request to the relevant CSA(s).
74. At the end of the Article 60 procedure, after the controller or processor has notified the LSA on the measures taken to comply with the LSA's final decision, as per Article 60(10), the LSA, upon information on that fact to the other CSA(s), may still request the CSA(s) to provide mutual assistance, in the form of verification, if – and how – the establishment of that controller or processor in that MS implemented the decision.
75. The mutual assistance requests sent under Article 60(2) should follow the general rules of Article 61, in what regards the purposes and reasons substantiating the request by the LSA on one hand, and the possible reply by the CSA(s) on the other.
76. In accordance with Article 61(2), when receiving a request by the LSA, the CSA(s) shall take the appropriate steps to reply "*without undue delay*", and in any case "*no later than one month after receiving the request*".
77. The principle of giving priority, to a certain extent, to the Article 60 procedure is already enshrined in Article 60(3) where the term "*without delay*" is used, as well as in the strict deadlines provided for in paragraphs 4 and 5. The term "*undue delay*", used in Article 61, also stresses the need for the SA to act promptly, though the variety of actions covered by the mutual assistance requests may imply different timelines to fully give satisfaction to a request. In any way, the CSA(s) shall inform the LSA no later than one month after receiving the request "of the results or, as the case may be of the progress of the measures taken to respond to the request," as per Article 61(2) in conjunction with Article 61(5).

#### 4.4 Setting up joint operations

78. In accordance with Article 60(2), the LSA may conduct joint operations pursuant to Article 62, in particular to carry out investigations or to monitor the implementation of a measure concerning a controller or processor established in another MS.
79. Therefore, within the LSA's leading role in the Article 60 procedure, whenever it considers that the ongoing case benefits from a joint investigation or from joint enforcement measures, the LSA may set up a joint operation by requesting the CSA(s) to engage in such action, though there is no obligation for a CSA to reply positively.
80. A joint operation can be hosted by the LSA in its MS or it could be organized by the LSA as a joint investigation action of the CSAs to be deployed in several MS, where there are establishments of the controller or processor, to make verifications on the spot necessary for the outcome of the cooperation procedure. A joint operation can also be triggered by the LSA, as a joint enforcement measure of the relevant CSAs to monitor simultaneously the implementation of the LSA's decision in each establishment of the controller or processor upon which the decision is binding.

## 5 ARTICLE 60(3) – INFORMATION BY THE LSA AND DRAFT DECISION OBLIGATION

81. Article 60(3) describes the decision-making process, which is a key step in the cooperation procedure between the LSA and the CSAs. The aim of this phase is to quickly find a consensus decision concerning the outcome of the case.
82. Article 60(3) focuses on the duties of the LSA and establishes three key obligations:
  - communication of the relevant information on the matter to the CSAs without delay,
  - submission of a draft decision to the other CSAs for their opinion without delay, and
  - taking due account of the CSAs' views.

These obligations are to be regarded in line with the consensual approach established in Article 60(1).

### 5.1 Article 60(3)(1): LSA's obligation to share information without delay

#### 5.1.1 The term of "without delay"

83. The term "*without delay*" is used in both sentences of Article 60(3). While sentence 1 contains the obligation of the LSA to communicate without delay the relevant information on the matter to the other CSAs, sentence 2 stipulates the LSA's obligation to submit without delay a draft decision to the CSAs.
84. Although the term "*without delay*" is used in various places in the GDPR, it is not further defined in Article 4.
85. Since Article 60(3) is a legal provision under Union law, the term "*without delay*" must be interpreted autonomously from national law to ensure a uniform application of the GDPR.
86. The term "*without delay*" was subject of the judgement of the CJEU (18.11.1999, C-151/98 P, Recital 25) in the context of the Regulation (EU) No. 2377/90. The CJEU found that the Court of First Instance

(ECJ) was right to hold that Article 8(3)(b) does not specify exactly the period within which the Commission must propose to the Council the measures to be adopted and that in using the expression “*without delay*” the Community legislature, whilst requiring it to act swiftly, did allow the Commission a certain degree of latitude.

87. Therefore, in accordance with the ruling of the CJEU the EDPB considers the term “*without delay*” in the context of Article 60(3)(1) as the obligation to act swiftly<sup>30</sup>.
88. The fact that the legislator has inserted the term “*without delay*” in this context indicates that it has seen a need for action in terms of increasing the speed in the information flow connected with the draft decision. Nevertheless, due to the diversity of cases, no specific deadline could be determined in this respect. Therefore, the EDPB considers the term of “*without delay*” to mean that the information must be provided not literally immediately or in a specific timeframe but without hesitation, i.e. within a review period to be measured according to the circumstances of the individual case. In summary, that means that the LSA has to act proactively and, as quickly as possible, appropriately to the case. This of course applies as well to the reaction by the other CSAs to requests by the LSA.
89. To facilitate the planning of the other CSAs for their contribution to the draft decision, the LSA should consider how it is possible to support the scheduling of work of the other CSAs. This could be done for example, where appropriate, by the way of creating an indicative timetable.

**Example 2:** Prior to the investigation, the LSA proactively and quickly shares a timetable of the steps it intends to take. In due time, following the completion of the investigation, the LSA sends a summary of the results of the investigations to the CSAs in form of a note, with a short, reasonable deadline<sup>31</sup> for comments in the context of an “informal consultation” in the EDPB Information system.

Following this, it shares the relevant information gathered and updates the timetable, adding a date for when it intends to share a preliminary draft decision, by when it requests comments by the CSAs on this preliminary draft decision and during which periods it intends to consult the affected parties.

90. As a best practice, the LSA and the CSAs may agree that the obligation to exchange relevant information “*without delay*” is fulfilled if there is a proactive, quick and comprehensive exchange of all relevant information, which enables the CSAs to screen, assess and react to it sufficiently early.

#### 5.1.2 The term of “relevant information”

91. With regard to the concept of relevant information, reference can be made to the remarks provided under section 3.3.
92. Article 60(3)(1) establishes an information obligation of the LSA towards the CSAs in contrast to Article 60(1)(2), which regulates a mutual exchange of information between LSA and other CSAs. The communication of relevant information by the LSA according to Article 60(3)(1) in conjunction with

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<sup>30</sup> In para. 115 of its opinion in the Case C 645/19 the Advocate General Bobek states that as a matter of principle, the GDPR requires, in cases concerning cross-border processing, the LSA to act promptly. Although acting promptly is not a synonym for acting swiftly, the EDPB considers that if the LSA acts proactively and as quickly as possible it also meets the requirements of acting promptly.

<sup>31</sup> What is understood as reasonable has to be assessed on a case by case basis and may vary from a few weeks up to a month or more.

Article 60(1)(2) is ultimately related to the submission of the draft decision. Relevant information that is accessible only to the LSA should be transmitted to the other CSAs via the EDPB Information system.

93. The core idea of the cooperation procedure is that the consensus decision is reached and the case is resolved by collaborative interaction between the LSA and the other CSAs. Therefore, the other CSAs' involvement in the cooperation procedure is not limited to the right to express a relevant and reasoned objection pursuant to Article 60(4). In particular, before the creation of the draft decision the CSAs should be able to contribute to the overall procedure and may express their views also before the creation of the draft decision.
94. To that end, the LSA should in general endeavour to exchange preliminary results prior to submitting the draft decision, in particular, when divergent views could be expected, or when the other CSAs may need some time to familiarize themselves with the subject matter. This enables the LSA to be informed about the views of the other CSAs, in order to take these views duly into account already in preparation of the draft decision.

**Example 3:** At an early stage, after a preliminary examination of a complaint-based case, indicating further use of personal data for other purposes by business partners, the LSA shares this discovery with the other CSAs to seek an agreement on whether to proceed exclusively within the remit of the complaint or to extend the scope of the investigation into such secondary data processing.

**Example 4:** Upon conclusion of the fact-finding, the LSA provides a summary of the main results to the other CSAs, and, as appropriate in this case, also identifies key-issues for their consideration, in order to start building a common ground for the assessment of the merits of the case. This anticipated interaction between the LSA and the other CSAs proves essential to detect from the outset different points of view and, consequently, to promote as much as possible the necessary convergence.

**Example 5:** At a later stage, closer to the submission of the draft decision, all involved SAs have an overview of the facts and also an assessment of the potential infringements found during the investigation phase. These preliminary results and further evaluation include provisions that have possibly been violated and envisaged measures to be taken by the SAs under Article 58(2) and under Article 83(2).

95. As set out above and in the examples, the exchange of controversial or divergent legal views, as well as the exchange of views on complementary steps taken or not, and/or elements provided or not, should be general practice. This could prevent the discussion on different interpretations of the GDPR and the decision on them from being shifted to the dispute resolution procedure.
96. Nevertheless, where the LSA decides to trigger an inquiry on its own initiative and not on the basis of elements forwarded by the other CSAs, it does so within the remit of its discretionary power and, therefore, the views of the other CSAs cannot result in compelling the LSA to change the scope of its inquiry<sup>32</sup>.

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<sup>32</sup> Nonetheless, a CSA may raise, in a last resort situation, an objection regarding the scope as highlighted in para. 9 of the EDPB Guidelines 09/2020 on relevant and reasoned objection, provided that it meets all the requirements posed in Article 4(24), as explained in the Guidelines.

## 5.2 Article 60(3)(2): LSA's obligation to issue a "Draft Decision"

### 5.2.1 Legal obligation to submit a draft decision

97. Article 60(3)(2) sets forth an obligation on the LSA to submit a draft decision to the other CSA(s). This is shown by the use of the "*shall*" form coupled with the verb "*submit*", which entails a rule to be followed in all cases where Article 60 is applicable.
98. The submission of a draft decision under Article 60(3)(2) is an obligation applying to the LSA in the context of all OSS procedures. The competence of the LSA is grounded in Article 56(1), which is to be regarded as 'lex specialis' whenever an issue arises in respect of cross-border processing operations. The competence of the LSA under Article 56(1) is exercised in such cases "*in accordance with the procedure in Article 60*"; therefore, the LSA acting within the framework of the OSS is bound by the provisions of Article 60, including Article 60(3)(2).
99. Accordingly, the LSA is required to submit a draft decision to the other CSAs in all cases, also when complaints are withdrawn by the complainant after the Article 60 procedure has been initiated or where no material (final) decision is issued according to national law.
100. Also in these cases, the draft decision serves as a final coordination between all supervisory authorities involved in the OSS procedure including the legal opportunities provided in Article 60(4) et seq. In complaint-based cases, the draft decision also provides the ground for the CSAs decisions pursuant to Article 60(8) and (9).

**Example 6:** After a complaint-based OSS proceeding has been initiated, the controller promptly eliminates the infringement after being approached by the LSA. In view of the case and the behaviour of the controller, the LSA concludes that the case may be closed. The LSA issues a draft decision stating its intention to close the case, which contains thorough reasoning for their course of action, and the remaining steps provided for by the Article 60 procedure are followed.

101. As explained in section 3.2 above and recalled by the EDPB in the RRO Guidelines 2/2020, "*the focus of all SAs involved should be on eliminating any deficiencies in the consensus-building process in such a way that a consensual draft decision is the result*". The LSA shall submit the draft decision to the other CSAs "*for their opinion*", i.e. the purpose is to consult the CSAs on the substance of the draft decision (see also reference in Article 60(4) to the "*consultation*" that the LSA is required to carry out "*in accordance with paragraph 3 of this Article*"). The consultation to which the submission of the draft decision is geared should therefore be seen in the light, once again, of the consensus objective underpinning the whole Article 60 mechanism (see the section 5.2.4 below on "*take due account of their views*").
102. As a best practice, the EDPB recommends that the LSA informs the other CSAs beforehand of the intention to submit a draft decision. This could be in line with an indicative timetable the LSA provided as part of the relevant information (according to Article 60(1)), in particular for cases which involve a large number of CSAs and/or which raise sensitive questions. In any case, knowing what is in the pipeline beforehand will help the CSAs organise their assessment of the draft decision and exploit the four-week deadline of Article 60(4) in full.
103. Regarding the "*submit*" part of the obligation, the EDPB recommends that such submission should only take place by way of the EDPB Information system so that certainty can be achieved as to the date of the submission, which is the starting point for the running of the four-week period mentioned in Article

60(4), and that all the CSAs can receive the draft decision simultaneously. This approach will ensure security and confidentiality of the submission and is also necessary in light of possible objections to the draft decision and disagreements between LSA and CSA, triggering the Article 65(1)(a) procedure<sup>33</sup>. Use of the EDPB Information system appears to be the most appropriate channel to ensure a clear timestamp for the submission of the draft decision also in pursuance of Article 60(12).

104. As for the contents of the submission, in principle the draft decision should be such as to contain all the elements required for the CSAs to assess it (see section 6.2.2 below). Moreover, in particular for cases resulting in the adoption of a corrective measure and involving a large amount of relevant information exchanged to understand the reasoning and the analysis leading to the draft decision, the “*relevant information*” for the purposes of the draft decision should have been exchanged before submitting the draft decision in the light of the consensus objective underpinning the whole cooperation procedure. In other, simpler cases, where the draft decision is self-explanatory and no or very little relevant information needs to be exchanged, the relevant information may be shared along with the draft decision. Thus, in principle, the obligation under Article 60(3)(2) is for the LSA to submit only the draft decision as such.

105. Furthermore, the EDPB recalls that, where it is applicable under national law, the LSA should make sure that the draft decision it submits in this phase is fully compliant with the national law provisions regarding the right to be heard of the parties targeted by it (in particular the controller/processor at issue and the complainant, if a complaint has to be dismissed or rejected according to the applicable national laws). The LSA is therefore not required to submit, jointly with the draft decision and at the same time, such documents as may be necessary to provide evidence of compliance with the right to be heard, but it should reference the steps taken to ensure such compliance in the draft decision itself.

#### 5.2.2 The term of “draft decision”

106. The submission of a draft decision is to be considered as one of the key elements within the cooperation mechanism as it constitutes on the one hand the decisive and final opportunity for mutual consultation on remaining disagreements and on the other hand, the only opportunity for the other CSAs to express reasoned and relevant objections.

107. The GDPR itself does not define the concept of the draft decision. In view of the meaning and purpose of the cooperation procedure, the notion of a draft decision at EU level should be subject to the development of common minimum standards to enable all involved SAs to participate adequately in the decision-making process.

108. According to Article 288(1) TFEU, a decision is an act of exercising [the Union’s] competences. In this context, the GDPR uses the terms of “*tasks*” (Article 57) and “*powers*” (Article 58) to establish the competences of data protection authorities.

109. Regarding legally binding measures supervisory authorities are empowered to take, a description of formal requirements can be found in Recital 129:

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<sup>33</sup> Indeed, Article 11(2), letter d) of the RoP requires the LSA to provide “*documentation proving the timing and format of the provision of the (revised) draft decision*” to enable the Secretariat to verify that the draft decision (or revised draft decision) and the objections were submitted within the applicable deadlines.

- Written form
- Clear and unambiguous wording
- Indication of the SA which has issued the measure<sup>34</sup>
- Date of issue of the measure
- Signature of authorised SA staff
- Reasons included
- Reference to the right of an effective remedy.

110. These formal aspects are in line with the ECJ case law on decisions of EU bodies as per Article 288(1)<sup>35</sup> TFEU as well as with the Charter of Fundamental Rights<sup>36</sup>. Even though these provisions are supposed to regulate EU bodies, they provide guidance and may allow conclusions on the form and content of a draft decision as the respective competences are conferred on the SAs by Union law.

111. The previous conditions lead to the interpretation that every decision that is aimed at legal consequences needs to include a description of relevant facts, sound reasoning and a proper legal assessment. These requirements essentially serve the purpose of legal certainty and legal protection of the parties concerned. Applied to the area of data protection supervision this means that the controller, processor and complainant should be able to acknowledge all the reasons in order to decide whether they should bring the case to trial<sup>37</sup>. Having regard to the decision making process within the cooperation mechanism, CSAs likewise need to be in the position to decide on possibly taking actions (e.g. agree to the decision, provide their views on the subject matter).

112. According to Article 60(3)(2) the term “*decision*” is modified by the prefix “*draft*”. A draft generally names a document, which is not final. It is an earlier version of the document that still needs a further step for completion. Apart from that final step, a draft contains all elements of the final document, but may be subject to further discussion or adjustment. As a result of such discussions, the draft can either be accepted by reviewers or modified according to their remarks. This is consistent with the wording of the GDPR, which states that the draft decision is to be submitted to the other CSAs “*for their opinion*”.

113. In order to fulfil their duties as CSAs in the framework of a cooperation procedure, it is necessary for the other CSAs to be able to assess the case on the basis of comprehensive documentation. The other CSAs need to be in the position to fully understand the case, the LSA’s conclusions and the reasoning, which have led to those conclusions.

**Example 7:** In order to be able to understand the appropriateness of a fine, the other CSAs must know the amount of the proposed fine and the specific circumstances of the assessment. This will regularly be explained in a comprehensible manner in the context of a decision that meets the above-mentioned minimum standards.

<sup>34</sup> This includes the dismissal/rejection of a complaint.

<sup>35</sup> Cf. ECJ, Joint Cases 11/66 (“*legal effects which are binding*”); ECJ, C 317/19 P (“*examine their complaint in sufficient detail and to give adequate reasons*”), ECJ, Joined Cases 8 to 11/66 (“*reasons for this decision with sufficient clarity*”); ECJ, C-24/62 (“*principal issues of law and of fact upon which it is based*”).

<sup>36</sup> Article 41(2)(c) CFR (“*obligation of the administration to give reasons for its decisions*”).

<sup>37</sup> See also: Recital 129, last sentence.

114. Taking into account the findings stated above, a draft decision is a provisional suggestion in the same form as a final decision would be. The only difference apart from procedural considerations between a draft decision and a final decision is that the step of the (final) consultation with the other CSAs has not been executed and the fact that the draft decision is not yet externally binding. If no relevant and reasoned objections according to Article 60(4) and (5) are expressed, the draft decision becomes legally binding for all SAs (cf. Article 60(6))<sup>38</sup>.
115. In view of the aforementioned constitutional requirements for a legal decision within the meaning of Union law, and against the background of the meaning and purpose of the cooperation procedure, it appears necessary that the draft decision in the sense of Article 60(3)(2) corresponds in form and content to the decision that the competent SA is to adopt in the specific case. In this respect, the EDPB considers the notion "draft" to refer only to the provisional nature resulting from the mandatory involvement requirement of Article 60(3)(2).
116. In cases where complaints are withdrawn after the Article 60 procedure has been initiated or where no material (final) decision is issued according to national law, the draft decision should be modified as is appropriate to the case with a view to providing the findings in line with paragraph 113 above. This means that the draft decision must in any case indicate the intention of the LSA to close the case and sufficient reasoning appropriate to the case, which shall, at a minimum, enable the other CSAs to defend the case within their jurisdictions.
117. The EDPB points out further that, in principle, the existing information obligations under the cooperation procedure do not affect the form and content of the draft decision. Continuous transparency during all stages of the procedure is vital, but it does not affect the need for a proper description of the case and the legal assessment as a part of the draft decision itself.
118. The cooperation system designed by the legislator suggests that consensus on all relevant matters regarding the respective case should be strived for at an earlier stage by the competent SAs through continuous exchange of information. Therefore, the EDPB would like to emphasise that the focus of all SAs involved should be on eliminating any deficiencies in the consensus-building process in such a way that a consensual draft decision is the result.
119. These statements apply without prejudice to any additional requirements for decisions that may arise from respective national law.

### 5.2.3 The term of "without delay" regarding the submission of the draft decision

120. According to Article 60(3) (2), the LSA shall submit the draft decision to the other CSAs "*without delay*". A timely submission of the draft decision also alleviates the risks for the protection of the fundamental rights and freedoms of data subjects, since corrective measures taken in due time by SAs prevent continuing infringements.
121. As regards the legal characterisation of the term "without delay", the analysis carried out in section 5.1.1 above applies. Therefore, the LSA has to begin swiftly to create the draft decision in order to

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<sup>38</sup> At this stage, it should be clarified whether the decision will be finalised via Article 60(7), (8) or 9. See para. 227.



submit it to the other CSA(s); nevertheless bearing in mind the complexity and the variety of cases, the timeline in which the LSA needs to submit swiftly the draft decision can be quite different.

122. What time is necessary for the submission of the draft decision must be assessed on the basis of an objective standard. The characteristics of the individual case and the overarching obligation to cooperate *"in an endeavour to reach consensus"* set out in Article 60(1), which in this case refers to the phase preceding the submission of the draft decision, shall be considered as well.

**Example 8:** A relatively straightforward investigation into a complaint regarding data subjects rights, whose outcome is to be disclosed to the other CSA as being relevant information pursuant to Article 60(3)(1), should enable the LSA to submit the draft decision shortly after the conclusion of the investigations.

In cases with complex findings and investigations, the LSA may be legitimised to take some time to submit the draft decision after the conclusion of the investigations (as made known to the CSAs)<sup>39</sup>.

123. It should be pointed out that, pursuant to Article 41(1) CFR, the complainant has the right that his or her complaint is handled within a reasonable time. The ECJ has stated in a judgement of 8 May 2014 (C 604/12) that the right to good administration, enshrined in Article 41 of the Charter, reflects a general principle of EU law. This notion must also be respected in the execution of Union law throughout applying Member State administrative law like in the Article 60 procedure - all the more so considering that Recital 129 recalls that the powers of SAs (such as powers of investigation and corrective powers, including sanctions) should be exercised *"(...) fairly and within a reasonable time"*. Thus, the timeframe with which a LSA may submit a draft decision in a complaint-based case should be such as not to entail that the handling of that complaint requires unreasonable time.

#### 5.2.4 The term of "taking due account of their views"

124. To allow the LSA to take into account the views of other CSAs, the other CSAs are tasked with expressing their views as early as possible in the procedure. The views to be expressed are, thus, understood in a more extensive way than only relevant and reasoned objections. Indeed, Article 60(3)(2) refers to a broader concept than the mere consideration by the LSA of relevant and reasoned objections (Article 60(4) and (5)), including also comments, expression of support or remarks.
125. The EDPB considers that the LSA has the obligation to take due account of the other CSAs' views prior to and after the submission of the draft decision, as the obligation to endeavour to reach consensus pervades the entire cooperation procedure and is not terminated by the submission of the draft decision.
126. For this purpose, the draft decision should already address as much as possible the arguments and views shared by the other CSAs. Recital 125(2) states that the LSA should closely involve and coordinate

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<sup>39</sup> It should be recalled that the need for a consensual scoping of the inquiries in the individual cases has been recognised by the EDPB in the RRO Guidelines 09/2020 (see para. 28): *"In procedures based on a complaint or on an infringement reported by a CSA, the scope of the procedure (i.e. those aspects of data processing which are potentially the subject of a violation) should be defined by the content of the complaint or of the report shared by the CSA: in other words, it should be defined by the aspects addressed by the complaint or report. In own-volition inquiries, the LSA and CSAs should seek consensus regarding the scope of the procedure (i.e. the aspects of data processing under scrutiny) prior to initiating the procedure formally."*

the CSAs already in the decision-making process. To what extent this is necessary may vary from case to case.

127. The obligation for the LSA to take due account of the other CSAs' views in preparing the draft decision can also be inferred from the wording of Article 60(3)(2) to the extent that it relates to views expressed before the submission of the draft decision. The obligation for the LSA to take due account of the other CSAs' views after submitting the draft decision requires that the LSA considers not only relevant and reasoned objections but also comments or remarks, expressed during the period provided in Article 60(4) and (5).
128. The obligation to take due account means that the LSA will have to consider the views and arguments of the other CSAs in substance, using due diligence, as the cooperation procedure aims for a consensual decision.
129. As a best practice, the LSA should react to the views provided by all CSAs. The overarching obligation of endeavoring to reach consensus places concomitant obligations on both the LSA and the other CSAs. This means that the LSA is obliged to take account of all the views. However, the LSA is not obliged to follow each view that has been expressed. This is in particular the case where there are contradictory views among the other CSAs.
130. Article 60(3)(2) uses the wording "*take due account*" of the other CSAs views, whereas Recital 130(2) refers to "*take utmost account*"<sup>40</sup> of the view of the CSA with which the complaint has been lodged when taking measures intended to produce legal effects, including the imposition of administrative fines. The different wording ("*utmost*" instead of "*due*") reflects the specific role of the CSA with which the complaint has been lodged and suggests that this CSA's views have a more significant influence on the draft decision. This is due to the close link between this CSA and the case, because the CSA acts as a single point of contact for the complainant and, additionally, this CSA may be required to adopt and defend a decision, pursuant to Article 60(8) and (9).

## 6 ARTICLE 60(4) – ASSESSMENT OF THE OBJECTIONS AND POSSIBILITY TO TRIGGER A DISPUTE RESOLUTION PROCESS

### 6.1 Purpose of the provision

131. Article 60(4) concerns the period immediately following the submission of the draft decision by the LSA. Upon the submission, a four-week deadline begins to run during which any CSA may raise objections to the draft decision.
132. Within the individual provisions of Article 60, Article 60(4) has a unique position insofar as it establishes a link between the cooperation and consistency procedure. Where a CSA "*expresses a relevant and*

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<sup>40</sup> In cooperation procedures under Article 56, in which the LSA has exercised its right under Article 56(4)(1) and decided to handle the case itself, the GDPR provides for an even more significant involvement of the CSA. In these cases, the CSA may submit to the LSA a draft for a decision according to Article 56(4)(2) and the LSA is expressly required to take "*utmost account*" of such draft. This wording suggests a higher threshold by introducing an even increased obligation for the LSA to consider the views of the CSA in comparison with "*take due account of their views*".

*reasoned objection to the draft decision, the lead supervisory authority shall, if it does not follow the relevant and reasoned objection or is of the opinion that the objection is not relevant or reasoned, submit the matter to the consistency mechanism referred to in Article 63.”* This deserves special attention in light of the fact that in this scenario the goal of reaching a consensus between the SAs, which is essential to the cooperation procedure, could not be achieved.

133. The EDPB recalls that the achievement of a consensual agreement on the outcome of the case is the ultimate goal of the whole procedure established by Article 60 and that reaching consensus should take priority over initiating the dispute resolution process. The duty of cooperation applies to every stage of the procedure and for all involved SAs. With regard to Article 60(4), this means that both other CSAs and LSAs should carefully follow the previous steps established in Article 60(1) and (3).

## 6.2 Relevant and reasoned objections by a CSA

134. After having been consulted by the LSA, in accordance with Article 60(3), the other CSAs may raise relevant and reasoned objections within a deadline of four weeks, since the CSAs must have been consulted *“in accordance with paragraph 3”*.

### 6.2.1 Calculation of the deadline

135. The four-week period starts once the LSA has submitted the draft decision according to Article 60(3)(2) via the EDPB Information System. The calculation of the deadline for raising possible objections shall be done on the basis of Regulation 1182/71<sup>41</sup>. According to Article 3(2)(c) of Regulation 1182/71, *“a period expressed in weeks...shall start at the beginning of the first hour of the first day of the period, and shall end with the expiry of the last hour of whichever day in the last week...is the same day of the week, or falls on the same date, as the day from which the period runs”*.
136. If an event from which a weekly period starts to run occurs, for example, on a Monday, the period also ends on Monday, in this case with the expiry of Monday (i.e. 11:59:59 p.m.) four weeks later.
137. The period includes public holidays, Sundays and Saturdays, since the GDPR does not expressly exclude these<sup>42</sup>. However, when the last day of a period is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day, thus the deadline ends on the following working day<sup>43</sup>. Considering the European nature of the cooperation procedure, the holidays published in the official journal for the EU institutions<sup>44</sup> should be considered for the purpose of determining public holidays. Further, the time zone of where the EDPB is established should be used.
138. To avoid having the expiration date fall during the weekend, the initiator (i.e. LSA) should trigger the workflow only on working days and should make sure that the deadline does not expire on one of the EU holidays<sup>45</sup>. In the spirit of cooperation, the EDPB encourages LSAs to consider the possible impact

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<sup>41</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, Article 40 RoP confirms that *“In order to calculate the periods and time limits expressed in the GDPR and in these Rules of Procedure, Regulation 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits shall apply”*.

<sup>42</sup> Article 3(3) of Regulation 1182/71.

<sup>43</sup> Article 3(4) of Regulation 1182/71.

<sup>44</sup> Annually updated by Commission Decision, see for 2021: Commission Decision of 2 March 2020 on public holidays for 2021 2020/C 69/05 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020D0303%2801%29>); with the exception of the national holidays of Belgium and Luxembourg.

<sup>45</sup> As no automatic extension of the deadline is currently ensured in the EDPB Information system.

of extended holiday periods before submitting its draft decision to allow the other CSAs as much time as possible to react to its draft decision.

139. During the four-week period, a CSA may express one or more objections to the draft decision submitted by the LSA. However, in view of the requirements to raise relevant and reasoned objection(s) to the draft decision as a whole, the CSA should provide their objections in one single submission, though clearly distinguishing the different objections. This best practice will facilitate the analysis by the LSA and eventually by the EDPB, in case the dispute resolution mechanism is triggered. If, after inserting the objection(s) in the EDPB Information system, the CSA wishes to modify its submission, in any way and for any reason, this would still be possible, as long as this remains within the deadline provided for in Article 60(4). Therefore, the CSA should delete the previous version of the objection(s) and upload the new one in the EDPB Information system<sup>46</sup>, so the submission available for the LSA and the other CSAs is always the updated text of the objection(s).

#### 6.2.2 Relevant and reasoned objections

140. One of the key elements in this stage of the cooperation procedure is a common understanding of the notion of the term “*relevant and reasoned objection*”. Article 4(24) defines relevant and reasoned objection as an objection to a draft decision as to whether there is an infringement of this Regulation, or whether envisaged action in relation to the controller or processor complies with this Regulation, which clearly demonstrates the significance of the risks posed by the draft decision as regards the fundamental rights and freedoms of data subjects and, where applicable, the free flow of personal data within the Union.

141. As the EU legislator suggested (end of Recital 124), the EDPB has issued guidelines on what constitutes a relevant and reasoned objection. The following paragraphs therefore only contain clarifications that are essential for the Article 60 procedure and are not already contained in the Guidelines 09/2020.

142. The right to raise an objection under Article 60(4) is available to each CSA individually and independently. Therefore, it does not depend on whether another CSA may already have raised an objection on the same matter. To the extent that a CSA objects on the basis of several items, each must separately meet the requirements for a relevant and reasoned objection under Article 4(24)<sup>47</sup>. Consequentially, the mere endorsement of or referral to another CSA’s relevant and reasoned objection does not constitute a relevant and reasoned objection on its own. In this context, for reasons of legal certainty as well as clarity and reliability within the objection process, the EDPB recommends that each CSA submit its own and complete (formal) objection to the LSA even if one CSA wishes to concur with the objection of another CSA<sup>48</sup>.

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<sup>46</sup> The EDPB Information system will automatically notify the LSA and other CSAs of the new addition.

<sup>47</sup> EDPB Guidelines 09/2020 on relevant and reasoned objection under Regulation 2016/679, available at [https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-092020-relevant-and-reasoned-objection-under\\_en](https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-092020-relevant-and-reasoned-objection-under_en).

<sup>48</sup> According to the EDPB Guidelines 09/2020 on relevant and reasoned objection under Regulation 2016/679, referencing another objection cannot be seen as meeting the requirement of Article 4(24). In para. 7 the Guidelines clarify that “(...) a submission by a CSA should in principle explicitly mention each element of the definition in relation to each specific objection.” Further, in para. 8 the Guidelines stipulate that “[t]herefore, the standard of “relevant and reasoned objection” is grounded on the assumption that the LSA’s obligation to exchange all relevant information is complied with, allowing the CSA(s) to have an in-depth understanding of the case and therefore to submit a solid and well-reasoned objection.”

143. In order to meet the threshold set by Article 4(24), a submission by a CSA should in principle explicitly mention each element of this legal definition in relation to each specific objection. If possible, as a good practice, the objection may also include a new wording proposal for the LSA to consider, which in the opinion of the CSA allows remedying the alleged shortcomings in the draft decision.
144. As required by Article 60(12), the CSAs shall submit the objections via an electronic and standardised format. The EDPB Information System shall be used for these purposes.
145. A mere “comment” expressed by a CSA in relation to a draft decision does not amount to an objection within the meaning of Article 4(24). The existence of comments shall therefore not give rise to the obligation to trigger the Article 65(1)(a) procedure if the LSA decides not to give any effect to the comment<sup>49</sup>.

### 6.2.3 Assessment of the objections to the draft submitted under Article 60(4)

146. The LSA should make use of all possible means to exchange with the other CSAs on the issues raised in the relevant and reasoned objection. The EDPB recalls that the draft decision of the LSA should primarily be self-explanatory. Nevertheless, in response to an objection, the LSA should, also as a good practice, provide the CSA with explanation as to why a certain position has been taken in the draft decision, and it should as well provide the CSA with the opportunity to further explain its objections with undue delay. The LSA may also take the initiative to organise meetings, or otherwise use informal consultation to ensure that the reasoning employed by the respective authorities is understood.
147. After this further cooperation following the raising of an objection, the CSA may consider whether the LSA’s response adequately addresses its concerns and, if so, the CSA may consider withdrawing its objection<sup>50</sup>. It may be the case in particular, when, following the LSA’s explanations, the conflicting views are only marginal in nature, in respect of the risks to the fundamental rights and freedoms of the data subjects.
148. If a CSA decides to withdraw its objection it should always explicitly identify the objection it intends to withdraw and be explicit that it wishes to withdraw said objection. This withdrawal may take place during the four-week period, or in case of a revised draft decision two-week period, following the submission of the draft decision, in which case the withdrawal should take place in the same EDPB Information system notification in which the objection has been raised. The withdrawal may as well take place after this period<sup>51</sup>. The LSA should make sure to document when this happened and notify this withdrawal to other CSA(s) without undue delay, via the EDPB Information system, as this information is to be understood as relevant information under Article 60(1).
149. When objections from different CSAs contradict each other on the assessment of a specific matter<sup>52</sup>, the LSA should indicate which objections it intends to follow and to what extent/how it intends to follow them. On the other hand, the other CSAs should carefully consider whether a withdrawal is

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<sup>49</sup> See para. 17 of the EDPB Guidelines 03/2021 on Article 65(1)(a) GDPR (version for public consultation).

<sup>50</sup> After the period of the procedure expired, the CSA may consider not raising again its objection if the draft decision is to be revised.

<sup>51</sup> As provided for in para. 27 of the EDPB Guidelines 03/2021 on Article 65(1)(a) a CSA may withdraw even after an Article 65(1)(a) procedure has been initiated. .

<sup>52</sup> A constant exchange of information between the SAs involved could prevent such situations.

appropriate in light of the opinions expressed by the LSA and/or other CSAs<sup>53</sup>. It is important to remember that the overarching aim of Article 60 is for decisions to be made by consensus, insofar as possible. This goal regards the LSA as well as on the other CSAs.

### 6.3 Submission to Board

150. Article 60(4) provides for two alternative conditions, each of which has the effect of requiring the LSA to seek a decision from the Board:

- The LSA is of the opinion that the objection(s) is/are not relevant or reasoned.
- The LSA does not follow the relevant and reasoned objection(s).

151. In the first situation, the LSA is of the opinion that the objection submitted by the CSA does not meet all the requirements set out in Article 4(24), i.e. it considers that the objection is either not relevant and/or not reasoned, or both, in terms of whether there is an infringement of the GDPR and/or whether the envisaged action in relation to the controller or processor complies with the GDPR. In the second situation, the LSA considers the objection(s) to be both relevant and reasoned, but does not intend to follow them.

152. “*The matter*” to be submitted to the Board only concerns objections that the LSA does not intend to follow or that the LSA does not consider to meet the threshold stipulated in Article 4(24). Therefore, the items on which there is no dispute are not to be addressed via the dispute resolution under Article 65(1)(a).

153. Although Article 60(4) does not provide for an explicit time limit for the submission, the fact that a decision is pending which affects the risks to the fundamental rights and freedoms of the data subjects should result in the requirement of a submission as soon as possible as appropriate to the individual case<sup>54</sup>.

154. On the other hand, in situations where the LSA wishes to follow some objections, but does not wish to follow other objections and/or does not consider them to be relevant and/or reasoned, the LSA should submit a revised draft in the procedure as per Article 60(5), according to the following section. The LSA should indicate clearly, through an informal exchange, which of the objections it intends to follow within the revised draft decision and how it intends to do so. Further, the LSA should indicate clearly, which objections have been noted as being the subject of a possible later dispute resolution via Article 65(1)(a)<sup>55</sup>.

155. Nonetheless, as the revised draft decision is a new instrument, if they want to sustain their objections previously raised, the other CSAs will have to reiterate their position by (re)submitting their objections once the revised draft decision is shared. The EDPB is of the opinion that this course of action should be followed because it will allow relying on the dispute resolution procedure only for the objections that remain on the table in spite of the efforts made by all the parties to first seek a consensual solution.

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<sup>53</sup> The CSAs should bear in mind that, should it come to a dispute resolution, the EDPB will adopt its decision based on a (qualified) majority vote.

<sup>54</sup> See also Recital 129, sentence 4 and 5.

<sup>55</sup> See also EDPB Guidelines 03/2021 on Article 65(1)(a).



## 7 ARTICLE 60(5) - THE REVISED DRAFT DECISION

### 7.1 Submission to the other CSAs

#### 7.1.1 The LSA intends to follow

156. Article 60(5)(1) gives the LSA the possibility to follow a relevant and reasoned objection. It is important to note that to follow a relevant and reasoned objection means to follow such objection as it is, because the objection at issue is found by the LSA to be both relevant and reasoned and the LSA concurs with the reasoning.
157. The focus is on the “*intention*” to follow. The LSA’s intention to follow an objection is reflected in the fact that the LSA submits a revised draft decision. To what extent the revised draft decision does follow the relevant and reasoned objection as a whole raised by a CSA is, among other things, the subject of the procedure regulated by Article 60(5)(2) (see below, section 7.2), and ultimately by Article 65(1)(a) in case of disputes.
158. It should also be recalled that the threshold set forth by the EU legislator in the definition of a relevant and reasoned objection under Article 4(24) has to be met also in light of the manner the relevant and reasoned objection is to be structured by a CSA as set in the Guidelines 09/2020<sup>56</sup>. This impacts the assessment of the relevant and reasoned objection by the LSA. Still, it is unquestionable that the intention to follow a relevant and reasoned objection is in line with the consensus objective underlying the whole Article 60 procedure. The revision should aim to completely address the risk posed by the initial draft decision as regards the fundamental rights and freedoms of the data subjects and, where applicable, the free flow of personal data within the Union that was identified in the objection.
159. The EDPB recalls that the LSA should make use of all possible means to exchange with the other CSAs on the issues raised in the relevant and reasoned objection. The LSA may take the initiative to organise meetings, or otherwise use informal consultation to ensure that the reasoning employed by the respective authorities is understood<sup>57</sup>. In any case, this exchange should lead to the fact that the content of the revised draft decision does not come as a surprise to the other CSAs, as it should be the result of a sincere cooperation.

#### 7.1.2 The obligation to submit a revised draft decision

160. The LSA is obliged to submit a revised draft decision if it intends to follow a relevant and reasoned objection, i.e. there is no alternative under the GDPR as clarified by the use of the “*shall*” auxiliary with the verb “*submit*”. Indeed, the alternative to submitting a revised draft decision can only consist in submitting the matter to the consistency mechanism as per Article 60(4) final sentence.
161. It should be pointed out that it is only a relevant and reasoned objection the LSA intends to follow that triggers the obligation on, and the possibility for the LSA to submit a revised draft decision under the GDPR. Article 60(5)(1) (and Article 60(4), for that matter) only refers to the “relevant and reasoned objection” submitted by a CSA – contrary to, in particular, Article 60(3), which refers to the “*views*” of the other CSAs<sup>58</sup>.

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<sup>56</sup> For details, see EDPB Guidelines 09/2020 on Relevant and Reasoned Objection para. 6-8.

<sup>57</sup> See also para. 146 et seq.

<sup>58</sup> See above in section 5.2.4 on “*take due account*”.

162. Accordingly, the fact that a CSA provided comments, remarks, observations to the LSA in the course of the four-week period mentioned in Article 60(4) which are not clearly and unambiguously declared as a relevant and reasoned objection does not entail an obligation or the possibility for the LSA to submit a revised draft decision. It should be recalled in this respect that both the LSA and the other CSAs are bound by the draft decision in case no objections are submitted “in the period referred to in paragraphs 4 and 5” pursuant to Article 60(6). This means that the LSA is not issuing a revised draft decision if no objections are submitted formally by the CSA, via the EDPB information system, in the four-week period set forth in Article 60(4) (more details in section 8) <sup>59</sup>.
163. Should the LSA consider it necessary to nevertheless adapt its draft decision as submitted under Article 60(4) on account of factors or considerations supervening during the four-week period, including comments or remarks submitted by the other CSAs, or further submissions by the controller/processor, the LSA should withdraw its draft decision prior to the expiry of the four-week period and submit a new draft decision to the other CSAs. In doing so, the LSA should strike a balance between on one hand the importance of the factors or considerations supervening and on the other hand the need to ensure the expediency of the cooperation procedure<sup>60</sup>. In all cases, the LSA should make clear to all the CSAs why it is withdrawing its draft decision by referring to the specific factor or consideration that is prompting it to take such a step. A new four-week period will start once the new draft decision is submitted. As said, this option is barred after the expiry of the above period in the absence of reasoned and relevant objections and the draft decision as initially issued becomes binding on the LSA and the other CSAs.
164. Considering the above, it is important for the LSA and the other CSAs to consult each other on how the LSA interprets the objections and how it intends to follow the objections.
165. Regarding the manner of submitting the revised draft decision, the same considerations apply as to the submission of the draft decision by the LSA<sup>61</sup>. A clear timestamp (date, hour) of the submission is the starting point for the two-week period referred to in Article 60(5)(2), therefore the revised draft decision shall only be submitted by way of the EDPB Information system.

### 7.1.3 The submission of the revised draft decision

166. As for the contents of the submission, the considerations made regarding the contents of the draft decision apply<sup>62</sup>. In short, the LSA is required to only submit a revised draft decision as such. The considerations made regarding the draft decision and the need to ensure compliance with the right to be heard<sup>63</sup> apply *mutatis mutandis* to the revised draft decision as well, so that the LSA should make sure that the revised draft decision references the steps taken to ensure such compliance and is self-explanatory regarding the changes introduced to follow the RRO and the underlying reasons<sup>64</sup>.

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<sup>59</sup> Comments signalling editorial errors and typos may however be taken into account to avoid material mistakes in the final decision.

<sup>60</sup> See the consideration regarding for instance the reasonable time for handling complaints mentioned in Recital 129.

<sup>61</sup> See above in section 5.2.3 on Article 60(3)(2) on submission/timing.

<sup>62</sup> See above section 5.2.2 specifying the term draft decision.

<sup>63</sup> See above para. 105.

<sup>64</sup> See also para. 159 as for informal exchanges prior to submission of a revised draft decision.



167. Article 60(5)(1) does not set any specific deadline for the submission of the revised draft decision by the LSA. This is one of the instances where there is a flexibility given to the SAs by the GDPR, also in order to facilitate the endeavour to reach a consensus. However, the principle of good administration, including the principles of reasonable timeframe and procedural economy still applies. Further, some factors that should be taken into account by the LSA in this respect include the following:

- the fact that a revised draft decision is subject to a shorter assessment period (2 weeks) compared to the draft decision;
- the reference to “*without delay*” applying to the submission of the draft decision under Article 60(3);
- the consideration made in Section 5.2.4 on Article 60(3)(2) as to the need to take account in this regard of the complexity of the case at hand, and here in particular of the number and nature of the relevant and reasoned objections received by the LSA;
- more generally, the obligation on all SAs to cooperate fairly and in a spirit of mutual trust.

168. All the above considerations would point to the need for the LSA to make sure that the lapse of time between receipt of the relevant and reasoned objections under Article 60(3) and submission of the revised draft decision is as short as possible and appropriate to the context of the OSS procedure. This is without prejudice to the efforts made to reach consensus and to the eventual obligation of the LSA to provide the right to be heard again, pursuant to national law, in view of envisaged changes in the revised draft decision that will newly affect the rights of the controller or processor.

#### 7.1.4 The views of the other CSAs

169. The purpose of the submission of a revised draft decision by the LSA is to allow all involved SAs to find consensus and to gather their opinions on the proposed revised draft decision. It is important to note, in this regard, that the purpose of Article 60(5) is to afford the CSAs the opportunity to express a view on any amendments / revisions that have been made to the original text of the draft decision that was originally circulated by the LSA pursuant to Article 60(4). The wording “*for their opinion*” of Article 60(5)(1) mirrors, in this respect, the wording of Article 60(3)(2) (see above section 5.2.1).

170. This means that – like for the draft decision – the submission of a revised draft decision should be preceded by exchanges between the LSA and all the CSAs to share the new conclusions the LSA has reached in the light of the relevant and reasoned objection(s) it intends to follow along with the relevant reasoning, in order to gather the opinions of the other CSAs<sup>65</sup>. This is especially appropriate if the relevant and reasoned objections address several issues in the case at hand, so that the extent and depth of the exchanges may vary from case to case. The LSA may for instance, where appropriate, share a preliminary revised draft decision before issuing the formal revised draft decision.

171. In turn, this will enable the other CSAs to flag remaining issues or questions that the LSA may wish to address at this stage, again in an endeavour to reach consensus, prior to the formal submission of a revised draft decision. In particular, the other CSAs should clearly indicate the points in respect of which they consider that the relevant and reasoned objections have not in fact been taken on board (i.e. followed) by the LSA. Ultimately, this informal consultation stage is intended to prevent the opinions by other CSAs from turning into relevant and reasoned objections to the revised draft decision

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<sup>65</sup> At this moment, the LSA should as well take account of the views of the other CSAs raised as comments.

and therefore from triggering the next steps in the procedure as outlined in the following section, with all the relevant consequences.

## 7.2 The Revised Draft Decision: Assessment Procedure

### 7.2.1 Joint application of Article 60(5) second sentence and the procedure of Article 60(4)

172. Article 60(5)(2) sets forth the formal procedure applying to the examination of the revised draft decision by the other CSAs. This procedure is the one referred to in Article 60(4), with the difference that the timeline is limited to two weeks<sup>66</sup>.
173. It should be noted that, by referencing Article 60(4), (5)(2) also regulates the procedure to be followed by the LSA in case it rejects or does not follow any relevant and reasoned objection to the revised draft decision as expressed by other CSAs in the two weeks following submission. This has several consequences:
174. In both cases the only outcome envisaged according to the procedure provided for under Article 60(4) is the submission of the matter by the LSA to the consistency mechanism, i.e. to the EDPB (as described in Section 6.2.3) with a view to a binding decision settling the dispute, which the LSA and other CSAs are then required to abide by (under Article 65(2) and (6)).
175. If no objections are raised by the other CSAs in the two-week period mentioned in Article 60(5)(2), Article 60(6) applies. Subsequently, the revised draft decision becomes binding on both the LSA and other CSAs, since Article 60(6) refers to the absent submission of relevant and reasoned objections within the periods referred to *“in paragraphs 4 and 5”*.
176. Thus, if relevant and reasoned objections are raised in the two-week period and the LSA intends to follow them, the only alternative is to apply Article 60(5)(1) again, in order to ultimately achieve the agreement on the (revised) draft decision, as per Article 60(6), which will become then binding for both the LSA and other CSAs.
177. This would be in line, on the one hand, with the endeavour to reach consensus, as prescribed by Article 60(1), and on the other hand, it would prevent triggering Article 65(1)(a) when there is no dispute to be settled at this point. Indeed, Recital 138 clearly supports such an approach, in that all means within the cooperation mechanism should be exhausted before activating the consistency mechanism.
178. Nevertheless, considering the enhanced cooperation procedures as outlined in this guidance (e.g. exchange of relevant information in different stages and informal consultation before submitting a draft decision), this situation should be very exceptional and limited to the cases where, despite all efforts, specific circumstances did not allow reaching a consensual position before.
179. However, it shall be borne in mind by the other CSAs and the LSA that that the GDPR provides for a swift action and for the powers of the SAs to be exercised fairly and within a reasonable time, as mentioned in Recital 129. Actually, it can be argued that it was not the intention of the legislator to promote an indefinite loop of revised draft decisions. For that reason, the possible submission of new revised draft decisions should be of an extraordinary character, as necessary in the particular case to strive for final consensus.

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<sup>66</sup> See above section 6.2.1 for Calculation of the deadline.

180. Recognising that the endeavour to reach consensus set forth as an overarching objective of the cooperation procedure in Article 60(1) does not entail an obligation to achieve consensus at all costs, when the LSA mindfully intends to follow a relevant and reasoned objection, and, by this way, achieve such goal, that should be made possible by submitting a (re-)revised draft decision.

181. Where the LSA concludes that consensus is not possible, as there is no substantive convergence between the LSA and other CSA(s), either because there are contradictory views from CSAs or because some legal issues remain unsettled, the LSA is then obliged by Article 60(5)(2) to prompt the procedure provided for in Article 60(4) and, consequently, to refer the case to the EDPB for the dispute resolution procedure as per Article 65(1)(a).

#### 7.2.2 Constraints on other CSAs in submitting relevant and reasoned objections to the revised draft decision

182. A further issue to be considered concerns the scope of the “*procedure referred to in paragraph 4*” as applied in the context of Article 60(5)(2). This refers in particular to whether specific legal constraints apply on either the CSAs or the scope of a relevant and reasoned objection to the revised draft decision issued by the LSA.

183. It should be recalled that the LSA and other CSAs are bound by the (revised) draft decision under Article 60(6) only if no objections have been submitted to the (revised) draft decision. If this is not the case, i.e. if relevant and reasoned objections were indeed raised to the draft decision pursuant to procedure provided for under Article 60(4), then no CSA is bound by the draft decision; moreover, the revised draft decision submitted by the LSA under Article 60(5)(1) is a different legal instrument compared to the draft decision mentioned in Article 60(4). Accordingly, a CSA may raise a relevant and reasoned objection to the revised draft decision even if it had not raised any objections to the draft decision during the four-week period mentioned in Article 60(4).

184. Indeed, the changes introduced by the LSA to follow the relevant and reasoned objections may raise new questions and issues a CSA disagrees with in the context of the revised draft decision. As per the above guidance, the CSA should make sure that each relevant and reasoned objection it submits should “*indicate each part of the draft decision [here: revised draft decision] that is considered deficient, erroneous or lacking some necessary elements, either by referring to specific articles/paragraphs or by other clear indications*”<sup>67</sup>.

185. The EDPB strongly encourages the LSA to share in advance its intention to revise the draft decision not only to the CSA that has raised an objection but also to all other CSAs. This will ensure that the revised draft decision and the reasoning employed will not come as a surprise to the other CSAs, and will help in preventing their possible negative reaction on the proposed changes.

186. The aim of a revised draft decision within the meaning of Article 60(5) is to endeavour to find consensus on issues for which no consensus was previously found. As a result, a CSA should not raise a relevant and reasoned objection in relation to a revised draft decision if there was previously no relevant and reasoned objection directed at that specific issue and the LSA has not revised the draft decision in respect of such issue.

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<sup>67</sup> See EDPB Guidelines 09/2020 on relevant and reasoned objection under Regulation 2016/679 para. 7.

## 8 THE BINDING EFFECT OF A (REVISED) DRAFT DECISION

187. Article 60(6) describes the final step of the decision finding process in cases in which a consensus between the LSA and other CSAs could be reached. In this case, consensus is signalled by the absence of objections to the (revised) draft decision, which means that Article 60(6) is applicable. This has two legal consequences:

- that the LSA and other CSA(s) are deemed to be in agreement,
- that they are bound by the decision in the sense that the assessment process following the issuing of the draft decision came to an end.

### 8.1 Deemed to be in agreement with the draft decision

188. Firstly, Article 60(6) states that, in the absence of an objection, the SAs shall be deemed to be in agreement with the (revised) draft decision in its entirety. The term “*deemed to be in agreement*” clarifies that the CSAs do not have to explicitly endorse the (revised) draft decision. The GDPR provides for a tacit agreement and supposes that the SAs have successfully reached consensus in the cooperation procedure. This tacit agreement refers to the content of the (revised) draft decision.

### 8.2 Bound by the draft decision

189. Since the LSA and other CSAs are presumed to be in agreement, they shall be bound by the content of the (revised) draft decision. This has immediate binding effects for all involved SAs. This means, that any further adoption of a measure under national law, such as the dismissal of a complaint, has to be strictly in line with the agreed draft decision.

190. Two different dimensions of the binding effect can be distinguished, i.e. as regards the entities bound by the (revised) draft decision (LSA/CSAs) and the scope of that (revised) draft decision.

191. Firstly, both the LSA and other CSAs are bound by the (revised) draft decision because no objections were raised or maintained. The legal consequences of the binding effect are that in this case the (revised) draft decision cannot be changed further or withdrawn afterwards<sup>68</sup>. The decision to be adopted by the LSA (Article 60(7)) or by a CSA (Article 60(8)) or in a shared form by both SAs (Article 60(9)) shall be based on the (revised) draft decision as it is.

192. The decision only binds the LSA and the other CSAs that participated in the cooperation procedure. Only SAs which have participated in the cooperation procedure (i.e. which have formally confirmed their role as a CSA in the context of this Article 60 procedure), and had the opportunity to raise a relevant and reasoned objection against the draft decision can be bound by a decision which was taken in that procedure. The other SAs neither had the opportunity to present their views in the cooperation procedure nor could raise a relevant and reasoned objection against the draft decision.

193. Therefore, if a CSA with a complaint which could be handled within the ongoing procedure asks the LSA to include its case in this procedure and join the cooperation procedure prior to the submission of the draft decision and had the opportunity to raise a relevant and reasoned objection, the procedure

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<sup>68</sup> In certain exceptional cases provided for by law such changes or withdrawal might still be necessary; see para. 207.

can continue and the “new” CSA will be bound by the draft decision provided that the requirements of Article 60(6) are met.

194. Conversely, if a CSA with a complaint which could be handled in the ongoing cooperation procedure only sends its case to the LSA to be bundled with the other(s) after the deadline of Article 60(4) or Article 60(5) has expired (e.g. because a SA received a complaint referring to the same infringement after the expiry of the deadlines), and, therefore, had not had the opportunity to express a relevant and reasoned objection, this CSA should very carefully consider whether a new cooperation procedure should rather be triggered for that purpose, as by requesting the LSA to bundle the new case within the ongoing procedure at this stage, this CSA is de facto waiving its possibility to raise an objection to the decision<sup>69</sup>.
195. The EDPB considers that, in principle, the LSA is not required to continuously check that all possible relevant CSAs with cases, which could be bundled to the ongoing procedures being dealt with, are informed about the ongoing cooperation procedure.
196. The binding effect granted by Article 60(6) to the specific decision is thus strictly limited to the specific cooperation procedure. The cooperation procedure deals with a specific issue and aims to reach consensus regarding the specific case.
197. Therefore, besides the binding effect of the decision as per Article 60(6), the outcome of a given cooperation procedure may not be automatically extended to other cooperation procedures, in spite of possible similarities. However, according to Article 51(2), each SA shall contribute to the consistent application of the GDPR and therefore, the LSA may reuse the text and conclusions of a draft decision agreed upon in a previous cooperation procedure involving the same or different controller and the same infringement of the GDPR to speed up the procedure at hand if it considers that this can facilitate reaching an agreement also in the current case.
198. The EDPB considers that the binding effect under Article 60(6) of a specific decision cannot cover the clarification of abstract legal questions, which are not connected to the real case. A SA that intends to ask the EDPB for clarification of abstract legal questions should instead consider the Article 64(2) procedure if the question refers to a matter of general application or producing effects in more than one MS.

## 9 ARTICLE 60(7) – THE LSA ADOPTING AND NOTIFYING THE DECISION

### 9.1 General

199. Article 60(7-9) address the different scenarios after the LSA and other CSAs have been bound by the draft decision. These steps can be reached after:
- (i) either the procedure laid down in the previous chapter has been concluded and consensus has been reached, or
  - (ii) after a dispute resolution by the Board has been concluded.

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<sup>69</sup> See above para. 22 et seq.

200. The abovementioned paragraphs outline:

- (i) which SA shall adopt a final decision following the previous steps, and
- (ii) which SA notifies or informs the controller, processor and complainant respectively.

201. Article 60(7) provides the procedure to follow in case a decision targeted at the controller or processor is to be adopted by the LSA. Article 60(8) and (9) are only relevant in complaint-based cases. Article 60(8) regulates the cases where the decision dismisses or rejects the complaint and should be adopted by the complaint receiving SA(s)<sup>70</sup>. Finally, Article 60(9) clarifies the procedure to be followed where some parts of a complaint have been dismissed or rejected, and the respective decision is adopted towards the complainant by the complaint receiving SA, while other parts have been acted upon, leading to a decision towards a controller or processor by the LSA.

202. Due to this relation, many of the concepts and considerations related to Article 60(7) will be analogously applicable for Article 60(8) and (9).

## 9.2 Adoption of the final decision by the LSA

203. Article 60(7)(1) stipulates that the LSA will be required to adopt a decision. This adoption is either:

- the implementation by way of a national decision of the consensus reached under Article 60(6), and/or
- the implementation by way of a national decision on the basis of the binding decision of the EDPB adopted under Article 65, following the procedure provided under Article 65(6) .

204. In either case, the national decision needs to give full effect to the binding consensus reached under Article 60(6), and/or to the binding directions set out in the EDPB's decision under Article 65<sup>71</sup>.

205. At the same time, the LSA will need to adjust the format to comply with its national administrative rules. Lastly, it will be able to make purely editorial changes before adopting its national decision<sup>72</sup>.

206. Article 60(7) does not stipulate a concrete timeframe within which this adoption has to take place. Nonetheless, the adoption should take place as swiftly as possible, in line with the principle of good administration. In contrast, if this point was reached following a consistency procedure, the deadline of one month provided by Article 65(6) has to be followed.

207. However, there could be exceptional situations, where adopting a decision, which is implementing the conclusions to which the SAs are bound under Article 60(6) would affect the legality of the national decision. This may be due to a ruling by the CJEU with an interpretation different to which the other CSAs and the LSA are bound or a change in legislation. In case of such circumstances, the CSA who becomes aware of those new facts should immediately inform the LSA and vice versa. Following this, the LSA should inform the other CSAs accordingly and submit to the other CSAs a new draft decision

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<sup>70</sup> Article 60 gives the CSA(s) that have received a complaint, which is subject to the procedure, a special role. This is further elaborated in the part on Article 60(8) and Article 60(9). To avoid confusion between these SAs and other CSAs, the term *complaint receiving SA* is used. It is important to note that even the LSA can have the role of a complaint receiving SA.

<sup>71</sup> See para. 114 and para. 192. See also para. 50 of EDPB Guidelines 03/2021 on the application of Article 65(1)(a) GDPR - version for public consultation.

<sup>72</sup> See footnote 58.

that takes account of the changed circumstances. This new draft decision should be aligned as much as possible with the previous draft decision, to make use of the already found consensus.

### 9.3 Notification and information

208. Once the decision has been adopted, the LSA shall notify the decision to its addressee(s). In complaint-based cases, the complaint receiving SA(s) shall also inform the complainant(s) of the decision. While the terms “*notify*” and “*inform*” are not specified in the GDPR, they may be specified in national law. However, the CJEU clarified that the duty to notify is satisfied when the addressee is placed in a position in which it can effectively become aware of the existence of the decision and the reasons why the institution intends to justify it<sup>73</sup>.
209. In line with the above, Article 60(7-9) appears to give the term “*notify*” a more formal value, as it is used for the communication to the party that may suffer adverse effects by the decision, and therefore may intend to challenge it<sup>74</sup>.
210. Therefore, for Article 60(7-9), when notifying the decision to the addressee, the SA should provide a full copy of the decision in a language complying with its national laws. Additionally, the MS in which the decision was notified will be the MS in which the decision may be challenged and, as outlined below, it should be brought to the attention of the parties that were merely informed that judicial action should be sought in such MS.
211. In any case, in the context of Article 60(7), after the LSA has notified the decision<sup>75</sup> to the main or single establishment of the controller or processor, as the case may be, it shall inform the other CSAs and the Board of the decision in question, including the information specified in the subsection below. For this purpose, the SA should make use of the Article 60 Final Decision notification procedure in the EDPB information system.
212. Besides ensuring transparency towards the CSAs, providing this information to the Board is essential to allow the SAs to comply with their obligation to contribute to the consistent application of the GDPR as stipulated in Article 51(2). This will allow them to avoid an inconsistent application of the GDPR should they in the future need to handle a similar case.
213. The complaint receiving SA(s) is then required to inform the complainant of the outcome of the complaint, in accordance with its national laws and/or practices. Additionally, the complaint receiving SA(s) should inform their complainant(s) pursuant to Article 77(2) that they may seek judicial remedy before a court in the MS of the LSA, if they are concerned by the decision of the LSA in the meaning of Article 78(1)<sup>76</sup>.

**Example 9:** After a media report casting doubt about the lawfulness of the processing conducted by HappyCompany, multiple individuals file a complaint with their local SA. Once the LSA has been identified, it decides to handle the complaints, as they refer to the same processing activity and the same infringement, in one file. Following the adoption of a decision by the LSA and the notification of

<sup>73</sup> See for more C-6/72 Section 15 p.2, joint cases T-121/96 and T-151/96, p. 40, joint cases C-115, 116/81 p. 13

<sup>74</sup> See also para. 55 of EDPB Guidelines 03/2021 on the application of Article 65(1)(a) GDPR, Article 78 and Recital (143) GDPR.

<sup>75</sup> See also section 5.2.2 on the term of “*draft decision*” for formal requirements.

<sup>76</sup> The complaint receiving SA should be able to identify the relevant court based on the adopted decision shared by the LSA.



the controller, each of the complaint receiving SAs informs their respective complainants on the decision. When doing so, the complaint receiving SAs also inform their complainants that they can effectively seek judicial remedy in the MS of the LSA.

214. At this moment, the LSA should as well inform the controller or processor of its obligations under Article 60(10) and the possible consequences of non-compliance.

#### 9.4 A summary of the relevant facts and grounds

215. When the LSA informs the other CSA(s) and the Board, it provides a summary<sup>77</sup> of the relevant facts and grounds regarding the decision in question. This summary should include the formal steps and grounds, as well as the substance, of the decision.

216. Therefore, the summary should include, at least, the following information<sup>78</sup>:

- The date of the final decision;
- The identification of the LSA and other CSAs;
- The name of the controller(s) and/or processor(s);
- The relevant legal conclusions in question (infringed provisions/rights not granted<sup>79</sup>), in relation to the factual basis of the case<sup>80</sup>;
- The outcome of the procedure and, if applicable, the corrective measures taken<sup>81</sup>.

217. As the case may be, the summary should allow any Member of the Board to understand the subject matter and conclusion of the decision reached. It is recommended that the LSA also provide a copy of the decision in English. This should be done by making use of the appropriate fields in the EDPB information system.

## 10 ARTICLE 60(8) –THE DISMISSAL/REJECTION OF A COMPLAINT

218. Article 60(8) concerns the situation where the CSAs including the LSA have agreed to dismiss or reject a complaint in full, or where this was concluded by the EDPB following Article 65. The SA with which the complaint was lodged can be either the LSA or another CSA. It introduces three obligations on the SA with which the complaint was lodged:

- to adopt the decision,
- to notify it to the complainant,
- to inform the controller.

This is to be done by derogation from Article 60(7).

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<sup>77</sup> This is separate from a summary of the decision.

<sup>78</sup> This information is contained in the fields that are to be filled out in the “final decision” form in the EDPB Information system.

<sup>79</sup> This could be due to restrictions under Article 23.

<sup>80</sup> See for instance the fields “Description of the Cooperation Case” and “GDPR Legal reference”.

<sup>81</sup> See for instance “Kind of Decision”.



## 10.1 Derogation from paragraph 7

219. Article 60(8) introduces a derogation from the situation where the LSA adopts and notifies the decision to the main, or single, establishment of the controller or processor in the EU. It applies solely in the situation where a complaint is dismissed or rejected in full.
220. Although in general, in the OSS mechanism, the LSA should remain the sole interlocutor of the controller/processor for their cross-border processing, in this specific situation a CSA has to inform the controller/processor about the dismissal or rejection of the case.

## 10.2 The term “Dismissal/Rejection”

221. The concepts of dismissal and rejection may have different definitions at national level, and therefore also different procedural/administrative implications. However, the GDPR does always refer to both actions, a dismissal or a rejection<sup>82</sup>.
222. The CJEU has consistently held that the terms of a provision of EU law which makes no express reference to the law of the MS for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the EU, having regard not only to its wording but also to the context of the provision and the objective pursued by the legislation in question. This follows from the need for uniform application of EU law and from the principle of equality<sup>83</sup>.
223. Regarding more specifically the interpretation to be given of what dismissal/rejection entails, reference can be made to the wording of Article 60(9) where dismissal/rejection are contrasted with a decision to “act on” the complaint. It should be noted that Article 60(9) refers to the LSA adopting the decision “for the part concerning actions in relation to the controller”, in which case the decision will be notified by the LSA to the controller/processor, whilst it refers to the CSA adopting the decision “for the part concerning dismissal or rejection of that complaint”, in which case the decision will be notified by the complaint-receiving SA to the complainant. Thus, Article 60(9) read jointly with Article 60(8) can be interpreted in the sense that dismissal/rejection of a complaint as the outcome of an Article 60 procedure entails that the (part of the) final decision to be adopted does not contain any action to be taken in relation to the controller.
224. From this standpoint, such a decision can be considered to adversely affect the complainant. This is confirmed by the GDPR legislative process, where a more general reference to decisions “adverse” to complainant was made<sup>84</sup>. The explicit reference to the right to judicial remedy and proximity to the complainant (as recalled above in particular in paragraph 213) also suggests that adverse decisions for the complainants should fall within this category. When the complaint is not followed at any level in the final decision and the LSA does not take any action in relation to the controller/processor in that

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<sup>82</sup> The CSAs will have agreed beforehand on the substantive consequences of the decision. The implementation of the consequences has to be done in line with national law, e.g. via a rejection or via a dismissal.

<sup>83</sup> See e.g. Case C-617/15, Hummel Holding, para. 22 and case law cited therein.

<sup>84</sup> See <https://data.consilium.europa.eu/doc/document/ST-14788-2014-REV-1/en/pdf>. In this version, the provision read: “Where the decision jointly agreed upon concerns a complaint and as far as it adversely affects the complainant, notably where the complaint is rejected, dismissed or granted only in part, each supervisory authority that have received such complaint shall adopt the single decision concerning that complaint and serve it on the complainant.” p. 36.

decision, the controller/processor will not have an interest in a judicial remedy within the MS of its main establishment. The complainant on the other hand, will have an interest in challenging the decisions adversely affecting him/her within their own MS, and in their own language<sup>85</sup>.

225. Thus, a decision dismissing or rejecting a complaint (or parts of it) should be construed as a situation where the LSA has found, in handling the complaint, that there is no cause of action regarding the complainant's claim, and no action is taken in relation to the controller. In such case, the complaint has to be dismissed or rejected via the decision adopted by the complaint receiving SA, as the case may be<sup>86</sup>.
226. Notification received in application of Article 60(8) can be used by the complainant to exercise the right to judicial remedy against the decision taken by a SA. Because this decision has to be adopted by the complaint receiving SA, this will allow proximity of the complainant to the competent court, under Article 78(3) and under Article 47 of the Fundamental Rights Charter (by seizing a court in the complainant's MS as the decision will be adopted by the CSA in that MS)<sup>87</sup>.
227. This means that, for the purpose of the application of Article 60(8) and (9), and of the final sentence of Article 60(7), the decision that is the outcome of the cooperation procedure should clearly provide for the dismissal or rejection of the complaint, or for the action to be taken in relation to the controller by the LSA, so that the LSA and CSA can direct the subsequent adoption of the respective national decisions accordingly, in pursuance of Article 60(8), (9) or (7).
228. If provided in national law, SAs should rely on these definitions of dismissal/rejection, as well as in the national administrative practices that configure a case of dismissal/rejection of a complaint, and proceed, in such cases accordingly<sup>88</sup>. In any case, the draft decision, shared as indicated in the previous sections, should provide clear reasoning as to why the complaint is dismissed/rejected under the relevant national laws.
229. It is important to note that a dismissal or rejection at this stage is different from a possible finding of dismissal or rejection at the vetting stage of the complaint procedure. As highlighted in paragraph 50, this vetting precedes any submission of the complaint to the LSA and is performed by the complaint receiving SA. In such a case, the complaint would be dismissed or rejected before reaching the cooperation stage.
230. It should also be acknowledged that there may be situations where the interests of the data subject are not adversely affected by the outcome of the OSS procedure, on account of the steps taken by the LSA in the course of handling the complaint. In such cases, the key factor is the demonstrated removal

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<sup>85</sup> See also the A.G. Opinion in case C-645/19 Facebook. In para. 105 the Opinion states:

*"These mechanisms of shifting the competence to adopt the decisions and, where necessary, of potentially adopting two-tier decisions (the LSA vis-à-vis the controller or processor, and the local authority vis-à-vis the complainant) seem specifically intended to avoid data subjects having to 'tour' the courtrooms of the European Union in order to bring proceedings against inactive supervisory authorities."*

<sup>86</sup> Possibly in conformity with the applicable national provisions where they do define the precise scope of dismissal/rejection.

<sup>87</sup> See Recital 141: *"the right to an effective judicial remedy in accordance with Article 47 of the Charter (...) where the supervisory authority partially or wholly rejects or dismisses a complaint (...)".*

<sup>88</sup> The SAs should make sure that the application of such definitions is consistent with the understanding of the terms as set out in this section.

of the cause of action - that is to say the complainant obtained the vindication of his/her rights through the intervention of the LSA towards the controller, which meanwhile met the terms of the complainant's claim. In such cases, providing that the complainant has been informed in the course of the procedure about the favourable result achieved, the LSA may decide to no longer take action in relation to the controller – i.e. none of the factors mentioned above in respect of dismissal/rejection vs. taking action is applicable.

231. This is the case, in particular, with the amicable settlement situation - i.e. the situation where the case has been resolved to a satisfaction of a data subject, when the infringement alleged in the complaint has been identified by the LSA and when the complainant agreed to an amicable resolution of this complaint. This situation falls within the remit of Article 60(7). Indeed, as already pointed out, the decision does not adversely affect the complainant, who manifested his or her satisfaction with the proposed settlement, and as such is not to be adopted by the complaint receiving SA under Article 60(8) or (9) – there being no dismissal or rejection at play. It will be for the LSA to adopt the final decision in such a case<sup>89</sup>, to take stock of the achieved settlement in its capacity as the sole interlocutor of the controller/processor under Article 56(6).
232. This also applies to cases that do not fall within the amicable settlement constellation, as the LSA did not or could not attempt such a settlement, but, nevertheless, its intervention during the handling of the complaint led the controller to stop the infringement and fully satisfy the complainant's claim. In view of this result and of the specific circumstances of the case, the LSA may consider that the most adequate decision for the complaint at hand is to terminate the handling of the case, taking note of the achieved solution, and without taking any action towards the controller<sup>90</sup>.
233. However, since an infringement was indeed identified by the LSA, the decision not to take any action towards the controller would have to be based on the careful assessment of the circumstances of the complaint as a whole, in order to keep the same level of guarantees afforded to the data subjects.
234. On the other hand, within this context the final decision will not be issued by the complaint receiving SA but instead by the LSA, as per paragraph (7), even though no action is to be taken in relation to the controller through such final decision – in recognition of the LSA's role as the sole interlocutor of the controller targeted by the complaint at issue and the fact that a finding of an infringement can have an adverse effect on the controller. This would render it impossible for the complainant to challenge the decision in the MS where the complaint was lodged, regardless of whether the complainant still has or has not cause of action to seek judicial remedy against a SA. That is a matter for the courts to determine in the concrete case. Therefore, whenever this scenario may happen, it should be ensured by the LSA via the complaint receiving SA that the complainant is duly informed on the positive achievement and on the envisaged outcome of the complaint and expresses no disagreement.
235. Lastly, it should be recalled that also the decision not to take action towards the controller, even when an infringement took place, has to have been agreed by the LSA and other CSAs, which entails that all

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<sup>89</sup> As this is the general rule, see also ECJ Case C-645/19 para. 56 : *"In accordance with Article 60(7) of that regulation, it is the responsibility of the lead supervisory authority, as a general rule, to adopt a decision with respect to the cross-border processing concerned,..."*

<sup>90</sup> This is without prejudice to the assessment on what is "the extent appropriate" to which the complaint is to be investigated pursuant to Article 57(1)(f), for which discretion lies with the SAs.

the circumstances of the case were duly taken into account, including the guarantee of the rights and freedoms of the complainant.

**Example 10:** Unhappy customer submits a complaint to its local SA in MS A. The SA performs the preliminary vetting and forwards the complaint to the LSA. After receiving the complaint, and, upon investigating the issue, the LSA cannot find evidence to support the complaint. Therefore, the LSA is unable to determine the infringement and concludes that the complaint is to be rejected/dismissed, as no action is taken on the controller. The LSA shares a draft decision to that effect and as no objection is raised, pursuant to Article 60(8) the complaint receiving SA will adopt the final national decision rejecting/dismissing the complaint and notify it to the complainant.

**Example 11:** A complainant indicates he sent a request to a controller and did not receive any answer. The DPA does not receive any response to its preliminary vetting actions. The complaint receiving SA sends the case to the LSA. The LSA notes that the request was sent to a wrong/non-existent address by comparison to what is indicated on the website of the controller (the complainant seems to have tried a contact@XXX.com address without checking the contact addresses mentioned on the website). The LSA shares a draft decision whereby the complaint is to be dismissed/rejected since there was only a mistake made by the complainant. As no objection is raised, the complaint receiving SA adopts the final dismissal/rejection decision under Article 60(8) and notifies it to the complainant.

**Example 12:** Unhappy customer submits a complaint to its local SA in MS A, arguing that the website HappyCompany is infringing its rights. After performing the preliminary vetting the complaint is transferred to the LSA in MS B. The LSA starts an investigation but cannot access the website in question. After some further research, it finds that in the meantime the controller has been dissolved. Therefore, the investigation cannot be continued and the LSA cannot find sufficient evidence to support the claims of the complainant. The LSA shares a draft decision that the complaint should be dismissed as the cause of the complaint has disappeared. As no objection is raised, the complaint receiving SA adopts the final national decision dismissing/rejecting the complaint under Article 60(8), and notifies it to the complainant.

**Example 13:** Unhappy customer submits a complaint to its local SA, arguing that her data are kept and processed unlawfully by HappyCompany, which is infringing her rights. After performing the preliminary vetting the complaint is transferred to the LSA. The LSA starts an investigation and is informed by controller that indeed the complainant's data are kept in their files on account of a failure in their customer resource management that did not erase the information in due time (preferences, purchase history, etc.); however, they immediately erased the information following the letter sent by the LSA, and proof of this is provided to the LSA. Therefore, the LSA shares a draft decision where it finds an infringement by the controller and it represents the situation as remedied following the LSA's intervention, without proposing any corrective measures in respect of the controller in particular because this was the first time such an infringement was committed. Accordingly, the LSA proposes to go for the option of adopting the final decision itself under Article 60(7). As no objection is raised, the LSA adopts a final national decision along the said lines and notifies it to the controller, whilst the complaint-receiving SA will inform the complainant of such decision.

### 10.3 Adoption of the decision

236. The SA that is required to adopt the decision is the SA, which received the complaint(s). This could apply to multiple SAs. It should do so in the way required under its national legislation. Even in the case where the complaint receiving SA is the LSA, its decision needs to be adopted under the procedure of paragraph 8 as derogation from paragraph 7 (lex specialis rule). Therefore, the complaint receiving

SA adopting the decision may be either the LSA, another CSA, or both (or all), depending on the number and nature of complaint(s).

237. When the complaint is lodged with one, or more CSAs, the LSA shall prepare the draft decision dismissing/rejecting the complaint(s), and the CSAs shall issue a final decision in the EDPB Information System, adopting it also at national level and introducing the necessary national legal provisions.
238. The CSA, when issuing a decision, must give full effect to the draft decision, which is binding on LSA and other CSAs under Article 60(6) and/or the EDPB binding decision following Article 65(1)(a)<sup>91</sup>.

#### 10.4 Inform and notify

239. Once the decision has been adopted, the complaint receiving SA(s) shall notify the complainant and inform the controller/processor<sup>92</sup>. This is to be done by each complaint receiving SA(s) according to their own national laws and practices and in the language provided by these provisions. For this purpose, the complaint receiving SA(s) may rely on the assistance of the LSA to inform the controller/processor on its behalf. In any case, the complaint receiving SA(s) needs to inform both the complainant and the controller about their possibility to seek judicial remedy in its MS.
240. The complaint receiving SA should then inform the other CSAs and the Board, including a summary of the relevant facts and grounds, as explained in section 9.4. This is grounded in the rationale of the information obligation mentioned in Article 60(7) regarding the decision adopted by the LSA, which is to ensure consistency by informing the other CSAs and the Board as a whole. The exchange of information on the actual decision finally adopted at national level – regardless of the SA that adopts such final national decision - is meant to ensure mutual knowledge of national decisions and avoid the arising of inconsistencies in the implementation of EU law. Thus, it would appear that although Article 60(8) does not explicitly require the CSA to provide a summary of the relevant facts and grounds, this is an overarching requirement that is intended to ensure consistent enforcement of the GDPR.

## 11 ARTICLE 60(9) – PARTIAL DISMISSAL/REJECTION

241. Article 60(9) is mainly a procedural step of the Article 60 procedure, which applies once the involved SAs have agreed on, and are bound by, a draft decision that contains both parts that were acted upon, and parts that were rejected/dismissed<sup>93</sup>.
242. In practice, this means that, at this point of the procedure, the decision on partial dismissal/rejection will have already been taken, and the parts in the draft decision that relate to the dismissal/rejection and those that refer to further action by the LSA have been clearly marked in the draft decision. SAs now only need to formalise it through the necessary adoption procedures described in Article 60(9). This gives rise to final national decisions, which must give full effect to the draft decision, which is binding on all CSAs under Article 60(6) and/or the EDPB binding decision following Article 65(1)(a).
243. Accordingly, the related notification/information duties are split between the LSA and the complaint receiving SAs. The LSA adopts a decision for the parts of the complaint that were neither dismissed nor

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<sup>91</sup> The scope of possible changes is outlined in para. 207.

<sup>92</sup> See section 10.4 on the difference between notifying and informing.

<sup>93</sup> See section 10.2 The meaning of these concepts is the same for both para.

rejected in line with what has been set forth in section 10.2. The LSA notifies its decision to the controller and informs the complainant about it; in this regard, the EDPB considers that the LSA may rely on the complaint receiving SA(s) to convey such information to the complainant(s) for the sake of administrative efficiency. Each complaint receiving SA(s) adopts a decision for the parts that were rejected/dismissed concerning the complaint that was submitted to it, following the approach laid out in the previous section (see, in particular, paragraph 239).

**Example 14:** Unhappy customer submits a complaint to its local SA, arguing that her data are kept and processed unlawfully by HappyCompany, which is infringing her rights. After performing the preliminary vetting the complaint is transferred to the LSA. The LSA starts an investigation and is informed by controller that indeed the complainant's data are kept in their files on account of a failure in their customer resource management that did not erase the unnecessary information in due time (preferences, purchase history, etc.). However, certain complainant's data have to be stored for longer because of financial and taxation requirements; proof of this is provided to the LSA. Therefore, the LSA shares a draft decision where it acts on parts of the complaint ordering the controller to finally erase the unnecessary information, and imposing a reprimand on the controller, but acknowledging the controller's right to keep the remaining personal data as required by law and the need for the complaint receiving SA to reject that part of the complaint. As no objection is raised, the LSA adopts a final national decision ordering the controller to comply with the complainant's request as for erasing the unnecessary information, notifies it to the controller and informs the complainant thereof; the complaint receiving SA adopts a final national decision rejecting the complaint as for the request to erase the necessary information and notifies it to the complainant, informing the controller thereof. The LSA and CSA will provide a summary of the relevant facts and grounds to the other SAs and the Board via the EDPB Information System, each of them for the respective final national decisions.

## 12 ARTICLE 60(10) – NOTIFICATION OF THE MEASURES ADOPTED BY THE CONTROLLER OR PROCESSOR TO THE LSA/CSA(S)

244. Paragraph (10) addresses the situation that occurs within the OSS mechanism and after a notification to the controller or processor of a decision adopted against it is made by the LSA requiring the controller or processor to act on the complaint.
245. This decision is notified as per either Article 60(7) or (9), when the LSA acts only on some of the grievances included in the complaint against the controller or processor.
246. The first sentence of Article 60(10) includes the obligation on the controller or processor to adopt the necessary measures to guarantee compliance with the decision, which applies the corrective powers granted in Article 58(2).
247. The controller or processor is obliged to ensure that these measures are implemented by all of its establishments in the EEA, where the processing at issue takes place.
248. The Article 60(10)(2) includes a second obligation for the controller or processor, i.e. to notify the LSA of any measures it has adopted to comply with the decision, where the latter entailed corrective

measures. This obligation ensures the effectiveness of the enforcement. It is also the basis of possible necessary follow-up actions to be commenced by the LSA, also in cooperation with the other CSAs<sup>94</sup>.

249. The second sentence of Article 60(10) also includes an obligation for the LSA to inform the other CSAs of the measures adopted by the controller or processor to comply with the decision taken against it. Although there is no set deadline for the LSA to provide such information to the other CSAs, such information should be disclosed as soon as the LSA receives the information from the controller or processor.

When informing the other CSAs, the LSA should consider providing as well its assessment if it concludes that the measures taken are insufficient, in particular in order to decide whether further actions are necessary.

## 13 ARTICLE 60(11) – URGENCY PROCEDURE

250. Article 60(11) addresses the “*exceptional circumstances*” under which a SA may rely on the urgency procedure of Article 66 in the course of an Article 60 procedure.

251. For the purposes of these Guidelines, the focus will accordingly be mainly on the wording of Article 60(11), i.e. on the conditions for invoking Article 66 in the course of an OSS procedure, and on the consequences, this has on the ongoing OSS procedure.

### 13.1 The conditions for invoking Article 66

252. The following **cumulative** conditions must be fulfilled for a SA to invoke the urgency procedure under Article 66 pursuant to Article 60(11):

- The SA is a supervisory authority concerned;
- There are exceptional circumstances;
- The CSA considers that there is an urgent need to act; and
- Such urgency aims at protecting the interests of data subjects.

Explanations on each condition are provided below.

253. Article 60(11) refers to the CSA as part of an Article 60 procedure, i.e. to a CSA that participates in an OSS procedure<sup>95</sup>. Such a CSA may invoke Article 66 if all the applicable conditions are fulfilled. Since the LSA is also a CSA according to the definition in Article 4(22), in principle an LSA may also invoke Article 60(11) if all the other conditions are fulfilled.

254. On the concept of “*exceptional circumstances*”, they could exist in situations where the urgency of the situation at hand is such as not to enable the use of the ‘standard’ cooperation or consistency procedures in a timeframe that is fitting. The exceptional nature of such circumstances dictates a restrictive interpretation. This applies in particular if, in spite of an ongoing Article 60 procedure, the CSA intends to request the EDPB, in accordance with Article 60(11), to adopt an urgent opinion or an

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<sup>94</sup> See section 4.

<sup>95</sup> See para. 22 et seq.

urgent binding decision under the terms of Article 66(3) – i.e. when it is considered that a competent SA (most likely the LSA as such) “*has not taken an appropriate measure*”. All attempts by an SA to informally obtain an intervention from the competent SA should be made beforehand, and this is clearly also in line with the consensus objective underlying the whole Article 60 procedure.

255. On the “*urgent need to act*” and the criteria to be applied by the CSA to assess urgency under the specific circumstances, reference can be made to Recital 137, which states that this is in particular the case “*when the danger exists that the enforcement of a right of a data subject could be considerably impeded*”. According to European case law, it is not necessary for the imminence of the harm to be demonstrated with absolute certainty: it is sufficient to show that the damage is foreseeable with a sufficient degree of probability<sup>96</sup>.
256. On the fourth condition, it should be pointed out that Article 60(11) does not refer to “*the rights and freedoms of data subjects*”, contrary to Article 66, but more broadly to their “*interests*”. However, since the procedure to be applied is the one “*referred to in Article 66*”, the EDPB considers that such interests do coincide with the rights and freedoms of data subjects as per Article 66.
257. As mentioned above, these conditions are cumulative and it is the responsibility of the CSA to provide “*reasons*” for each of them, regardless of whether it intends to take urgent measures under Article 66(1) or request an urgent opinion or an urgent binding decision from the EDPB under Article 66(2) or (3).
258. Furthermore, a CSA should consider several additional factors on top of the conditions set forth in Article 60(11) prior to taking such a step e.g.:
- the elements gathered from the OSS procedure,
  - exchanges with the other CSAs (including the LSA),
  - exchanges with the controller/processor and, where applicable, the complainant regarding the cross-border processing at issue,
  - the stage reached within the Article 60 procedure (in particular, how close the procedure is to its finalization, and therefore to the taking of enforcement action regarding the controller/processor).
259. Concerning the “*urgent need to act*”, the CSA should in particular take account of the last point.

### 13.2 The interaction with an ongoing Article 60 cooperation procedure

260. The urgency procedure under Article 66 derogates from the Article 60 procedure due to its exceptional nature; however, it leaves it unprejudiced. Thus, if a CSA relies on an urgency procedure in accordance with Article 60(11), and all the relevant conditions are fulfilled, it does not have the effect of terminating the existing OSS procedure. Therefore, the consequences resulting from the adoption of provisional measures by the CSA under Article 66(1)), and/or of an urgent opinion or binding decision requested by the EDPB under Article 66(2) or (3), will have to be factored in that OSS procedure accordingly.

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<sup>96</sup> See order in Case T-346/06 R IMS v Commission [2007] ECR II-1781, paragraphs 121 and 123.



261. From a general standpoint, a distinction can be drawn depending on the nature of the urgent measures sought:

- the CSA adopted measures that are provisional and limited in time and to its national territory pursuant to Article 66(1) and does not intend to request final measures to the EDPB;
- the CSA adopted provisional measures under Article 66(1) and intends to obtain final measures via the application of Article 66(2), or the CSA intends to directly obtain final measures via the application of Article 66(3);

262. In the case of application of Article 66(1), the OSS procedure can continue towards the adoption of final measures under the LSA's direction, without the CSA's provisional measures having any particular consequences on the OSS procedure. In the scenario where Article 66(2) or (3) is applied, the urgent measures requested to the EDPB by the CSA are final in nature. Hence, in such scenario, the urgent binding decision or urgent opinion adopted by the EDPB is bound to impact the ongoing OSS procedure, in particular on account of the need for the LSA to implement it without delay. Accordingly, the LSA and other CSAs will have to suspend the handling of the case pending the issuance of such urgent binding decision or urgent opinion.

263. Once the EDPB issues its urgent opinion or urgent binding decision, the OSS procedure can recommence and the effects produced by the urgency procedure will have to be factored in the OSS procedure. However, it should be considered that the LSA is required to adopt its final decision in pursuance of such EDPB urgent opinion or urgent binding decision within a very limited timeframe set by the EDPB on case-by-case basis (e.g. two weeks or one month), exactly on account of the urgency of the matter as endorsed by the EDPB.

264. The LSA and the other CSAs are in the best position to establish whether the issues addressed by the ongoing OSS procedure have been fully covered by the LSA's final decision adopted on the basis of the EDPB's urgent binding decision or urgent opinion, or if there are outstanding issues.

265. In the former case, the OSS procedure will come to its conclusion following the adoption of the final decision by the LSA, which will be followed by the procedural steps regulated under the terms of Article 60(7-9) as the case may be. This may mean that, since the matter is closed, no draft decision will be shared by the LSA in accordance with Article 60(3)<sup>97</sup>. If there are further issues that need to be addressed on top of those that have been the subject of the urgent opinion or urgent binding decision, the LSA will have to clearly identify which issues part of its draft decision remain to be addressed within the current OSS procedure and which ones were resolved via the urgent binding decision or urgent opinion adopted by the EDPB. In such a case, the current Article 60 procedure will resume after the LSA adopted and notified its final decision, from the stage at which it was suspended because of the urgency procedure.

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<sup>97</sup> In any case, the views of the other CSAs were already expressed via the urgent binding decision or urgent opinion adopted by the EDPB.

## QUICK REFERENCE GUIDE

### **I. INTRODUCTION**

This annex is based on the GDPR and the Article 60 guidelines of the EDPB and should be read with the relevant sections of them for any question of legal interpretation.

This document is meant to provide quick reference information on the procedures relating to the Cooperation between the lead Supervisory Authority (LSA) and the other Supervisory Authorities concerned (CSA) in case of cross border processing. Accordingly, the document is structured in accordance with the sequence of the steps to be performed in an Article 60 procedure by highlighting both legal obligations and shared best practices as set out in the said GDL.

As for the phase prior to the starting of an Art. 60 procedure, in particular regarding determination of the LSA and preliminary vetting of cases, reference should be made to WP244 rev.01 and to the other relevant guidance.

The main phases in an OSS procedure are outlined below:

## PHASE 0: decide who is LEAD

This is related to the confirmation that cross-border processing takes place and the location of the main or of the single establishment of the controller/processor (Art. 56)

## PHASE I: exchange relevant information and investigate

Art. 60 (1)

Possibly Art. 60 (2):  
mutual assistance & joint operations

## PHASE II: prepare decision

Art. 60(3) to (5)

## PHASE III: adopt decision

Art. 60 (6) to (10)

Possibly Art. 60 (2):  
mutual assistance & joint operations

EDPB  
Information  
System  
Art. 60(12)

## II. STEP BY STEP PROCEDURE

### Phase I: Exchange information & Investigate

	Legal Requirements	Who, When and What	Recommendations and best practices	EDPB Information System (IMI)
1a	Article 60(1) – The lead supervisory authority shall cooperate with the other supervisory authorities concerned (...) in an endeavor to reach consensus. (...)	<p><b>Who:</b> LSA and CSA equally</p> <p><b>When:</b> throughout the entire cooperation procedure</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Mandatory cooperation</li> <li>- Active cooperation (fair and constructive) to prevent disputes in an endeavour to reach consensus (42)</li> </ul>	<ul style="list-style-type: none"> <li>- Utmost and determined effort by SAs to achieve consensus as a legal objective (39);</li> <li>- Consensual acting should be the rule (41);</li> <li>- Use all possible tools to reach consensus (40,42);</li> <li>- Select cooperation approaches best suited for the case at hand (43);</li> <li>- Provide each other the opportunity to express its views (42);</li> <li>- Take each other's views into account (42, 127).</li> </ul>	
1b	Article 60(1) – (...) The lead supervisory authority and the supervisory authorities concerned shall exchange all relevant information with each other.	<p><b>Who:</b> LSA and CSA equally</p> <p><b>When:</b> throughout the entire cooperation procedure, in a timely manner</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Mandatory exchange of all relevant information on the subject matter</li> <li>- Exchange of necessary documents and views before the submission of the draft decision</li> </ul>	<ul style="list-style-type: none"> <li>- Exchange all information (facts and legal reasoning) necessary to reach a conclusion on the case (46);</li> <li>- Informal exchanges among SAs in earlier stages and raising of possible issues, before triggering formal steps, to increase the likelihood of reaching consensus (55-57);</li> <li>- Information exchanges should be adequate and proportionate to enable SAs to perform their role (47);</li> <li>- For the LSA: relevant information when dealing with the controller/processor (findings,</li> </ul>	<b>Art 60 Informal Consultation</b>

	Legal Requirements	Who, When and What	Recommendations and best practices	EDPB Information System (IMI)
			<p>reports, exchanges with the organization) (48-50);</p> <ul style="list-style-type: none"> <li>- For the CSA: relevant information regarding the case (complaint, further correspondence, data breach notification, any further findings, etc.) (50);</li> <li>- Only share personal data if necessary to deal with the case (51);</li> <li>- Flag specific issues as confidential to meet national legal requirements (52).</li> </ul>	
2	<p>Article 60(2) – <i>The lead supervisory authority may request at any time other supervisory authorities concerned to provide mutual assistance pursuant to Article 61 (...) in particular for carrying out investigations (...)</i></p>	<p><b>Who:</b> LSA</p> <p><b>When:</b> at any time prior to submission of DD</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Possibility to request mutual assistance to a CSA(s), including to investigate an ongoing cross border case.</li> <li>- Such requests follow the rules of Article 61 (grounds for the request; deadlines for the reply).</li> <li>- Reply by CSAs without undue delay and no later than 1 month after receiving the request.</li> </ul>	<ul style="list-style-type: none"> <li>- Requests can cover: additional info from the complainant; facts to be checked; evidence to be collected; inspections to be carried out on the establishment of the controller/processor (70-73).</li> </ul>	<p><b>Art 61 Mutual Assistance</b></p> <p><b>Art 61 Voluntary Mutual Assistance</b></p>

	Legal Requirements	Who, When and What	Recommendations and best practices	EDPB Information System (IMI)
3	Article 60(2) – The lead supervisory authority (...) may conduct joint operations pursuant to Article 62, in particular for carrying out investigations (...).	<p><b>Who:</b> LSA</p> <p><b>When:</b> at any time prior to submission of the DD</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Possibility to set up a joint operation to investigate a controller or processor established in another Member State</li> <li>- Rules of Article 62 are applicable to such joint operation</li> </ul>	<ul style="list-style-type: none"> <li>- The joint operation can be hosted by the LSA or can be organized by the LSA and deployed in one or several Member States where there are establishments of the controller/processor relevant for the specific case (79-80).</li> </ul> <p><b>NOTE:</b> Article 60(2) may also be relied on after conclusion of the OSS procedure to perform checks under 60(10) (see below) (74, 80).</p>	<p><b>Art 60 Informal Consultation</b></p> <p><b>Art 62 Joint Operation</b></p>

## Phase II: Prepare decision

	Legal Requirements	Who, When and what	Recommendations and best practices	IMI
1a	Article 60(3) – <i>The LSA shall, without delay, communicate the relevant information on the matter to the other supervisory authorities.</i>	<p><b>Who:</b> LSA</p> <p><b>When:</b> without delay</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Communicate to the CSAs the relevant information on the case at hand</li> </ul>	<ul style="list-style-type: none"> <li>- Information to be provided to the CSAs swiftly, according to the circumstances of the specific case (87-88);</li> <li>- The LSA should consider to proactively and quickly share a timetable with the steps to be taken until the submission of the draft decision (89-90, 102);</li> <li>- After completion of investigation, the LSA should send a summary of the results to the CSAs for their feedback within a short reasonable deadline. The LSA shares its assessment on the feedback received (94);</li> <li>- 'Relevant information' includes any additional exchanges on controversial issues or divergent views in line with the consensus objective (93-95);</li> <li>- The LSA can share with the other CSAs the scope and main conclusions of the DD prior to its formal submission, in order for the CSAs to contribute to the overall procedure (57, 93);</li> <li>- In the preparation of the DD, the LSA should take into account the views</li> </ul>	<b>Art 60 Informal Consultation</b>



	Legal Requirements	Who, When and what	Recommendations and best practices	IMI
			<p>preliminarily expressed by the CSAs (93-94);</p> <ul style="list-style-type: none"> <li>- In simple cases, where the DD is self-explanatory and/or very little information needs to be exchanged, the relevant information may only be shared along with the DD (104).</li> </ul> <p><b>NOTE: See Phase 1, step 1b</b></p>	
<b>1b</b>	Article 60(3) – <i>It shall without delay submit a draft decision to the other supervisory authorities concerned for their opinion (...)</i>	<p><b>Who:</b> LSA</p> <p><b>When:</b> as soon as possible, after gathering all facts and exchanging information and points of view with the CSAs, which depends on the complexity and particularities of cases.</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Mandatory submission of a draft decision to the CSAs in all Article 60 cases for consultation purposes.</li> </ul> <p>EXCEPTIONAL CASE: If there are supervening factors, including comments submitted by the CSAs or</p>	<ul style="list-style-type: none"> <li>- The submission of a DD applies to all OSS procedures, including in situations where: the complaint is withdrawn during an ongoing A60 procedure; there is an amicable settlement; the infringement ceased; the case is to be closed; no action against the controller or processor is envisaged; or where the LSA is not issuing the final decision (97-100);</li> <li>- The DD should correspond <b>in form</b> and <b>content</b> to the decision to be adopted in the specific case, and contain all formal requirements of a legally binding measure (109-110, 114-117);</li> <li>- The DD should have a written form, clear and unambiguous wording,</li> </ul>	<b>Art 60 Draft Decision</b>

	Legal Requirements	Who, When and what	Recommendations and best practices	IMI
		<p>further submissions from the controller/processor, the LSA may withdraw its draft decision within the 4-week period consultation envisaged under 60(4), clearly stating its reasons, and submit a new DD to the CSA(s), as swiftly as possible, and a new deadline starts running (163).</p>	<p>issuing SA, date of issue, signature of authorized SA staff, reference to the right to an effective remedy (109);</p> <ul style="list-style-type: none"> <li>- The draft decision should also contain a description of relevant facts, sound reasoning and a proper legal assessment, so CSAs fully understand its conclusions (104, 111,113);</li> <li>- The DD should set out clearly whether an issuing under Art 60(7), (8) or (9) is pursued. In case of Art 60(9) it should be clear what will be issued by the LSA and what by the complaint receiving SA(s) (227);</li> <li>- The four-week period starts running upon submission of the DD (103,135);</li> <li>- The LSA should ensure that only triggers the workflow in working days and that the deadline does not expire on an EU holiday (138).</li> <li>- The LSA should make sure the DD is fully compliant with the national rules for the right to be heard (RTBH), and that the steps taken in that regard are referenced in the DD (105).</li> </ul>	
1c	Article 60(3) – [The LSA shall] take due account of their views	Who: LSA	<ul style="list-style-type: none"> <li>- The LSA should react to the views provided by all CSAs (129);</li> </ul>	

	Legal Requirements	Who, When and what	Recommendations and best practices	IMI
		<p><b>When:</b> as swiftly as possible</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Consider the views of CSAs regarding the draft decision, in order to reach a consensual outcome.</li> </ul>	<ul style="list-style-type: none"> <li>- The LSA should explain how it intends to take due account of such views, which are to be followed and those which are not, including for being contradictory among each other (129);</li> <li>- The LSA should take the utmost account of the views of the complaint receiving CSA, since it acts as a point of contact for the complainant and this CSA may be required to adopt and defend a decision (130).</li> </ul> <p><b>NOTE: See Phase I, step 1a, on reaching consensus and Phase II, step 1a, on the preparation of the draft decision</b></p>	
2a	Article 60(4) – <i>Where any other of the CSAs within a period of four weeks after being consulted (...) expresses a relevant and reasoned objection to the draft decision, (...)</i>	<p><b>Who:</b> CSA(s) recognized as participating in the OSS procedure</p> <p><b>When:</b> Within 4-week period following submission of DD by LSA</p> <p><b>What:</b> Option to submit a RRO on the DD.</p> <p><b>NOTE:</b> See EDPB Guidelines 9/2020 on concept of RRO</p>	<ul style="list-style-type: none"> <li>- Reaching consensus should take priority over initiating the dispute resolution process, so previous steps should be carefully followed (133);</li> <li>- The CSA should provide its objection(s) in one single submission, though distinguishing the different objections (139);</li> <li>- If the CSA wishes to modify its submission, it can still do so during the 4-week period by deleting the previous version and uploading in IMI a new one (139);</li> </ul>	<b>Art 60 Draft Decision</b>

	Legal Requirements	Who, When and what	Recommendations and best practices	IMI
			<ul style="list-style-type: none"> <li>- An endorsement or referral to another CSA's objection does not constitute a RRO. Each CSA should then submit its own objection complying with the RRO guidelines (142-145).</li> </ul>	
2b	<p>(...) the LSA shall, if it does not follow the RRO or is the opinion that the objection is not relevant or reasoned, submit the matter to the consistency mechanism</p>	<p><b>Who:</b> LSA</p> <p><b>When:</b> as soon as possible, after the 4-week period of consultation on the DD</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Mandatory submission of matter of the case to EDPB under Article 65(1)(a) if LSA does not follow RRO/does not find objection to be a RRO</li> </ul> <p><b>NOTE:</b> See EDPB Guidelines 9/2020 on concept of RRO</p>	<ul style="list-style-type: none"> <li>- Reaching consensus should take priority over initiating the dispute resolution process, so previous steps should be carefully followed (133,149);</li> <li>- In response to RRO, the LSA should convey its first assessment and present which RRO intends to follow and in what extent, and which does not, and better clarify its position while giving the CSA(s) the opportunity to further explain the objections (146-149);</li> <li>- Such additional cooperation can take different forms, including organization of meetings or use of informal consultation procedures (146, 159);</li> <li>- Following the LSA's explanations and if the conflicting views are only marginal, the CSA(s) may consider withdrawing the RRO. In such situation, the CSA should explicitly declare that it withdraws its RRO (147-149);</li> </ul>	<p><b>Art 65 - Dispute Resolution by the Board</b></p>

	Legal Requirements	Who, When and what	Recommendations and best practices	IMI
			<ul style="list-style-type: none"> <li>- The LSA should document this withdrawal and notify the other CSA(s) without delay (148);</li> <li>- When consensus is not achieved, the LSA should refer the matter to the EDPB as soon as possible (151-153, 174, 181).</li> </ul> <p><b>NOTE:</b> If the LSA wishes to follow some objections, but does not wish to follow other objections and/or does not consider them to be relevant and/or reasoned, the LSA should submit a revised draft in the procedure as per Article 60(5), according to the following section. →The LSA should indicate clearly, through an informal exchange, which of the objections it intends to follow within the revised draft decision and how it intends to do so. Further, the LSA should indicate clearly, which objections have been noted as being the subject of a possible later dispute resolution via Article 65(1)(a) (154).</p>	

3a	<p>Article 60(5) – Where <b>the LSA</b> intends to follow the RRO, it shall <b>submit to the other CSA a revised draft decision for their opinion.</b></p>	<p><b>Who:</b> LSA</p> <p><b>When:</b> as soon as possible (good administration principle)</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Mandatory submission of a revised draft decision to the CSA(s), only in case the LSA intends to follow a RRO.</li> </ul> <p><b>NOTE: See Phase II, step 1b, on submission of the draft decision</b></p>	<ul style="list-style-type: none"> <li>- The LSA is barred from submitting a revised draft decision solely on account of comments or other remarks (162-163 and EDPB Guidelines 9/2020);</li> <li>- Following the assessment of the RRO, the LSA should clearly state to all CSA(s) its intention to submit a revised draft decision (RDD) (169-170);</li> <li>- The lapse of time between the RRO and the submission of a RDD should be as small as possible and appropriate to the OSS procedure (167-168);</li> <li>- Prior to the formal submission, the LSA may share a preliminary RDD, via informal consultation, to ensure that there is agreement on the amendments introduced and consensus can be achieved (170);</li> <li>- The RDD should completely address the risks posed by the initial DD regarding the data subjects' fundamental rights and freedoms, as identified in the RRO (158).</li> </ul>	<p><b>Art 60 Revised Draft Decision</b></p>
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	Legal Requirements	Who, When and what	Recommendations and best practices	IMI
3b	Article 60(5) – (...) That revised draft decision shall be subject to the procedure referred to in paragraph 4 within a period of two weeks	<p><b>Who:</b> LSA and CSA(s) recognized as participating in the OSS procedure</p> <p><b>When:</b> See Step 2a/2b in Phase II</p> <p><b>What:</b> See Step 2a/2b in Phase II</p> <p><b>NOTE:</b> In case no RROs are raised, article 60(6) applies</p>	<ul style="list-style-type: none"> <li>- The RDD should be regarded as a different legal instrument compared to the DD submitted under 60(4) (183);</li> <li>- A CSA may raise a RRO to the RDD even if it had not raised an objection to the DD (183-184);</li> <li>- A CSA should not raise a RRO in relation to a RDD if there was no RRO directed at that specific issue and the LSA has not revised the draft decision in respect of such issue (186).</li> </ul> <p><b>NOTE: See Phase II, Step 2a/2b on the submission of RRO</b></p> <p>EXCEPTIONAL CASE: If there are extraordinary circumstances, not met before, where the LSA mindfully intends to follow a RRO raised during this last consultation period that allows reaching consensus and avoiding to refer the matter to the EDPB when there is no longer a dispute to be settled, the LSA may submit a (re) revised draft decision (176-180).</p>	<b>Art 60 Revised Draft Decision</b>



### Phase III: Adoption of final decision

	Legal Requirements	Who, When and What	Recommendations and best practices	IMI
1	<p><b>Article 60(6)</b> - Where <b>none of the other supervisory authorities concerned has objected</b> to the draft decision submitted by the lead supervisory authority <b>within the period referred to in paragraphs 4 and 5, the lead supervisory authority and the supervisory authorities concerned shall be deemed to be in agreement with that draft decision and shall be bound</b> by it.</p>	<p><b>Who:</b> The CSA(s) recognized as participating in the OSS procedure</p> <p><b>When:</b> After 4 weeks from submission of DD (60.4); or after 2 weeks from submission of (last) RDD (60.5)</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Agreement between LSA and CSA on DD/RDD, in the absence of RROs</li> <li>- Bindingness of DD/RDD on LSA and CSAs → DD/RDD may no longer be withdrawn or amended, subject to exceptional circumstances. (187; 191)</li> </ul>	<ul style="list-style-type: none"> <li>- No need to act, agreement is implied by absence of RROs (tacit agreement) (188)</li> <li>- National final decision by LSA/CSA [see 2a/2b] should not depart from binding DD/RDD (189-191)</li> <li>- Binding effect limited to specific, concrete case addressed (196)</li> <li>- A CSA intending to join the procedure at this stage should consider initiating a separate OSS procedure (otherwise, it will be automatically bound by DD/RDD). (192-195)</li> <li>- Text/Conclusions of binding DD/RDD may be re-used for subsequent OSS procedure (same or different controller, same infringement) if this can speed up handling of case. (197-198)</li> </ul>	
2a	<p><b>Article 60(7)</b> – (1) <b>The lead supervisory authority shall adopt and notify the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the other supervisory authorities</b></p>	<p><b>Who:</b> The LSA</p> <p><b>When:</b> As swiftly as possible from bindingness under 60(6) (good administration principle) (206) / NOTE: within 1 month from EDPB binding decision under 65(1)(a) (206)</p>	<ul style="list-style-type: none"> <li>- Provide full copy of final national decision (as per national law) to controller/processor (210)</li> <li>- Inform controller/processor also on their obligations under 60(10) (214)</li> <li>- Use IMI “Final Decision” fields to inform other CSAs and EDPB of national final decision (211-212)</li> </ul>	<b>Art 60 Final Decision</b>

	Legal Requirements	Who, When and What	Recommendations and best practices	IMI
	concerned and the Board of the decision in question, including a summary of the relevant facts and grounds.	<p>EXCEPTIONAL CASE: Supervening constraints during this period (e.g. relevant EU case law/legislation) may require LSA to refrain from adopting national final decision and to submit new DD to CSAs, after informing CSAs (207)</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Adoption of the national final decision (203-205; 230-235)</li> <li>- Notification of national final decision to establishment of controller/processor (pursuant to national law) (208-209)</li> <li>- Information to other CSAs and Board about national final decision</li> <li>- Summary of facts and grounds in decision</li> </ul>	<ul style="list-style-type: none"> <li>- Use IMI “Final Decision” fields to provide summary of facts and grounds to other CSAs and EDPB (215-216)</li> <li>- A copy of national final decision in English is also recommended to be provided to CSAs, via IMI (217)</li> </ul>	
2b	Article 60(7) – (II) The supervisory authority with which a complaint has been lodged shall inform the complainant on the decision.	<b>Who:</b> The CSA which received a complaint addressed in the binding decision under 60(6) or 65(1)a, in which action is taken by the LSA on the complaint	<ul style="list-style-type: none"> <li>- Information should be provided to complainant in line with national law and practices (213)</li> <li>- Complainant should be informed that right of redress (if any) is to be exercised in the LSA’s MS (national law) (213)</li> </ul>	<b>Art 60 Final Decision</b>

	Legal Requirements	Who, When and What	Recommendations and best practices	IMI
		<p><b>When:</b> As swiftly as possible (good administration principle) following information by LSA on adoption of national final decision</p> <p><b>What:</b> Information to complainant on national final decision adopted by LSA</p>		
3	<p><b>Article 60(8)</b> - By derogation from paragraph 7, where a complaint is dismissed or rejected, the supervisory authority with which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof</p>	<p><b>Who:</b> The CSA which received a complaint addressed in the binding decision under 60(6) or 65(1)a, if the complaint is dismissed or rejected (218-219; 236-238)</p> <p><b>When:</b> As swiftly as possible (good administration principle) following bindingness under 60(6) / within one month following bindingness under 65(1)a</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Adoption of national final decision dismissing/rejecting complaint (national law) (221-225; 228-229)</li> <li>- Notification of national final decision to complainant (national law) (219; 226)</li> </ul>	<ul style="list-style-type: none"> <li>- The CSA may rely on LSA to convey information on national final decision to controller/processor (239)</li> <li>- Use IMI “Final Decision” fields to inform other CSAs and EDPB of national final decision (240)</li> <li>- Use IMI “Final Decision” fields to provide summary of facts and grounds to other CSAs and EDPB (240)</li> <li>- Controller/processor should be informed that right of redress (if any) is to be exercised in the CSA’s MS (national law) (239)</li> <li>- A copy of national final decision in English may be also provided to CSAs, via IMI (240)</li> </ul>	<b>Art 60 Final Decision</b>

	Legal Requirements	Who, When and What	Recommendations and best practices	IMI
		<ul style="list-style-type: none"> <li>- Information to controller on national final decision (national law) (220)</li> <li>- Information to other CSAs and Board about national final decision</li> <li>- Summary of facts and grounds in decision</li> </ul>		
4a	<p><b>Article 60(9) – (1)</b> <i>Where the lead supervisory authority and the supervisory authorities concerned agree to dismiss or reject parts of a complaint and to act on other parts of that complaint, a separate decision shall be adopted for each of those parts of the matter.</i></p>	<p><b>Who:</b> LSA and CSA bound by agreement (under 60(6) ) / bound by decision (under 65(1)a) to partly dismiss/reject and partly act on a complaint (241-242)</p> <p><b>When:</b> As swiftly as possible (good administration principle) following bindingness under 60(6) / within one month following bindingness under 65(1)a</p> <p><b>What:</b></p> <ul style="list-style-type: none"> <li>- Adoption of separate national final decisions by LSA and CSA regarding different outcomes in respect of the same complaint (242)</li> </ul>		

	Legal Requirements	Who, When and What	Recommendations and best practices	IMI
4b	<b>Article 60(9) – (II)</b> <i>The lead supervisory authority shall adopt the decision for the part concerning actions in relation to the controller, shall notify it to the main establishment or single establishment of the controller or processor on the territory of its Member State and shall inform the complainant thereof</i>	<p><b>Who:</b> The LSA taking action on part of a complaint in relation to the controller</p> <p><b>When / What:</b> <i>See Step 2a for LSA</i></p> <p><b>NOTE:</b> <i>The LSA must inform complainant of the national final decision it has adopted (243)</i></p>	<p><b>See Step 2a for LSA</b></p> <p><b>NOTE:</b> <i>The LSA may rely on CSA to convey information on national final decision to complainant (243)</i></p>	<b>Art 60 Final Decision</b>
4c	<b>Article 60(9) – (III)[...]</b> <i>the supervisory authority of the complainant shall adopt the decision for the part concerning dismissal or rejection of that complaint, and shall notify it to that complainant and shall inform the controller or processor thereof</i>	<p><b>Who:</b> The CSA dismissing or rejecting part of a complaint</p> <p><b>When / What:</b> <i>See Step 3 for CSA</i></p>	<b>See Step 3 for CSA</b>	<b>Art 60 Final Decision</b>
5a	<b>Article 60(10) – (I)</b> <i>After being notified of the decision of the lead supervisory authority pursuant to paragraphs 7 and 9, the controller or processor shall take the necessary measures to ensure compliance with the decision as regards processing activities in the context of all its establishments in the Union.</i>	<p><b>Who:</b> Controller/processor</p> <p><b>When:</b> After notification by LSA of national final decision under 60(7) or 60(9) (244-245)</p> <p><b>What:</b> Taking and notification of measures to ensure compliance with</p>		

	Legal Requirements	Who, When and What	Recommendations and best practices	IMI
5b	<b>Article 60(10) – (IIa)</b> <i>The controller or processor shall notify the measures taken for complying with the decision to the lead supervisory authority [...]</i>	LSA's national final decision (243; 246-248)		
5c	<b>Article 60(10) – (IIb)</b> <i>[the lead supervisory authority], which shall inform the other supervisory authorities concerned.</i>	<p><b>Who:</b> The LSA</p> <p><b>When:</b> As soon as possible following notification by controller/processor (249)</p> <p><b>What:</b> Information to CSAs on measures taken by controller/processor</p>	<ul style="list-style-type: none"> <li>- LSA should consider providing CSAs with assessment of measures taken by controller/processor (249)</li> <li>- LSA may request mutual assistance from CSAs under 60(2) to verify compliance by controller/processor in relevant establishments (62; 69; 74; 80)</li> </ul>	

## ARTICLE 60(11) – URGENCY PROCEDURE

	Requirements	Who, When and What	Recommendations and best practices	IMI
U	<p><b>Article 11</b> - Where, in exceptional circumstances, a supervisory authority concerned has reasons to consider that there is an urgent need to act in order to protect the interests of data subjects, the urgency procedure referred to in Article 66 shall apply</p>	<p><b>Who:</b> CSAs and LSA</p> <p><b>When:</b> At any time in the course of an OSS procedure, if exceptional circumstances apply</p> <p><b>What:</b> Application of urgency procedure under Article 66</p> <p><b>NOTE:</b> EDPB binding decision in urgency procedure under 66(3) may entail adoption of national final decision without DD/RDD (265)</p>	<ul style="list-style-type: none"> <li>- SAs should consider various factors, in particular the stage reached in OSS procedure, prior to invoking urgent need to act (252-259)</li> <li>- CSAs and LSAs should jointly consider how best to factor the outcome of the Article 66 procedure into the ongoing OSS procedure (260-265)</li> </ul>	<p><b>Art 66 Adopted Provisional Measures</b></p> <p><b>Art 66 Urgent Opinion/Decision by the EDPB</b></p>